

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
DOCKET NO. EDS 10706-17

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F.H. and M.H. o/b/o J.H.,	:	
	:	
Petitioner,	:	
	:	TRANSCRIPT
-vs-	:	OF
	:	RECORDED PROCEEDINGS
West Morris Regional High	:	
Board of Education,	:	
	:	
Respondent.	:	
_____	:	

April 9, 2018

BEFORE:

THE HONORABLE THOMAS BETANCOURT, A.L.J.

APPEARANCES:

CLEARY GIACOBBE ALFIERI JACOBS, LLC
By: Jodi S. Howlett, Esq.
By: Danielle Pantaleo, Esq.
Attorney(s) for Petitioner

WARSHAW LAW FIRM
By: Julie Warshaw, Esq.
Attorney(s) for Respondent

Transcriber: Peggy Wasco
CRT SUPPORT CORPORATION
2082 Highway 35, P.O. Box 785
South Amboy, N.J. 08879
Phone: (732) 721-4330
Fax: (732) 721-7650

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Colloquy

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1 THE COURT: This is the matter of F.H. and
2 M.H. on behalf of J.H. vs. West Morris Regional High
3 School Board of Education. The docket number is EDS
4 10706-17. Today is April 9, 2018. I am Judge
5 Betancourt.

6 Appearances for the District?

7 MS. HOWLETT: Jodie Howlett on behalf of the
8 respondent school district.

9 THE COURT: Good morning.

10 For the petitioners?

11 MS. WARSHAW: Julie Warshaw, Warshaw Law Firm,
12 representing the petitioners.

13 THE COURT: Good morning.

14 MS. WARSHAW: Good morning.

15 THE COURT: Let's address respondent's motion.
16 I'm reserving on it simply because I have not had the
17 time to review the paperwork, and particularly, the
18 recordings of the IEP meeting. So, I can't make a
19 decision without having reviewed everything, considered
20 it, done some research, so we're going to start your
21 case today. I'll get to it sometime this week and
22 hopefully get an order out, one way or the other, by
23 week's end or early next week. Okay?

24 MS. HOWLETT: Your Honor, just one other
25 outstanding matter. I believe there was briefs that

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1 were filed on the scope of the hearing.

2 THE COURT: I'm going to address it. I mean,
3 it's kind of all encompassing, in terms of the motion,
4 and so, I'm going to address all of it in one order.

5 Go ahead.

6 MS. WARSHAW: Are we going to have oral
7 argument on this motion?

8 THE COURT: No, we're not. Okay? I'd like to
9 actually start a hearing, as opposed to continually
10 filing motions and having arguments, arranging
11 settlement conferences that we don't do anything at
12 other than say "Hello" to each other and then you leave
13 without starting anything. I know you guys agreed to
14 that, but I wasn't aware that we weren't going to move
15 the case the last time we were here, after we didn't
16 settle.

17 So, go ahead.

18 MS. WARSHAW: Your Honor, just to clarify for
19 the record, with last time, I had spoken to Ms. Howlett
20 the week before and she had indicated to me that there
21 was a good chance that the case was going to settle and
22 that's why I agreed, but --

23 THE COURT: I said I didn't know -- I didn't
24 know.

25 MS. WARSHAW: -- but when we came here, she

Colloquy / Opening Statement - Warshaw

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1 had a no-pay position, which is not --

2 THE COURT: All right.

3 MS. WARSHAW: -- what we had expected.

4 MS. HOWLETT: Your Honor --

5 THE COURT: It didn't settle. If it didn't

6 settle, it didn't settle. I don't want to go back and

7 forth why it didn't settle or what happened. It didn't

8 settle and we didn't move the case. That's my -- from

9 my perspective, we didn't move the case, one way or the

10 other. It didn't settle, but nobody called a witness,

11 so -- and I didn't know we weren't going to do anything

12 if there was no settlement. That was just what I was -

13 - that's all I meant, okay? I'm not mad at either of

14 you. You're both very nice, very good attorneys, so

15 let's move on.

16 First witness.

17 MS. HOWLETT: Thank you, Your Honor.

18 THE COURT: Openings? Because we haven't

19 started yet. Do you want to do an opening?

20 MS. HOWLETT: The District --

21 THE COURT: The District waives?

22 MS. HOWLETT: Yeah, the District waives their

23 opening.

24 THE COURT: Okay. Opening?

25 MS. WARSHAW: We'd like to do an opening, but

Colloquy / Opening Statement - Warshaw

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1 also, we haven't had the benefit of a list of who's
2 going to be even called today. We were entitled to
3 that. I asked last week and I asked over the weekend.
4 I still haven't -- I didn't even know who was going to
5 be called today, so it's a little unfair for me to have
6 to do cross examination when I don't even know who the
7 witnesses are.

8 MS. HOWLETT: Your Honor, the petitioners were
9 provided with a witness list in accordance with the
10 pre-hearing order within the time frame provided by the
11 order and the regulations.

12 THE COURT: Okay. So, if you have a witness -
13 - you saying that never happened?

14 MS. WARSHAW: We got a witness list but
15 there's like 19 people on the list.

16 THE COURT: That's the list.

17 MS. WARSHAW: But, Your Honor, we're required
18 to tell, you know, the respondent who we're calling at
19 what time. They should be at least -- at least giving
20 us the names of the people who they're calling today.
21 I don't even have a list now, so that would be --

22 THE COURT: Call your first witness.

23 Well, wait a minute. You wanted to do an
24 opening. Go ahead.

25 MS. WARSHAW: Yes, I'd like to do an opening.

Opening Statement - Warshaw

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1 This -- this case is about a 17 year old
2 girl, J.H., who has been suffering from school-related
3 anxiety. And today, and throughout this hearing,
4 you're going to be hearing testimony about how J.H.
5 came to where she is today and how she was unable to
6 attend school due to the school-related anxiety, but
7 she is now able to function in a smaller, quieter high
8 school with appropriate supports. You will hear
9 testimony about the appropriateness of the proposed --
10 the inappropriateness of the proposed IEP, both in the
11 classification and the placement. You will hear
12 testimony about the independent evaluations and how
13 J.H. was diagnosed with a specific learning disability
14 and sensitivity to noise and the school refused to
15 amend their proposed classification or their proposed
16 placement.

17 You will hear testimony about how the school
18 district ignored our attempts, from mid-August through
19 September, to try to get the IEP amended and to reflect
20 J.H.'s true diagnosis and her needs. You will hear
21 about petitioner's efforts and how they had no choice
22 but to find an appropriate placement of J.H. and how
23 they had to unilaterally place her at the Purnell
24 School. You will hear how well she is doing
25 academically, emotionally, and socially.

Opening Statement - Warshaw / Colloquy

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1 Petitioner respectfully requests that the
2 Court take into consideration all the facts, the
3 evaluation reports, and how petitioners were ignored by
4 the school district, the timing and the lack of
5 efforts, and the failures by the school district, and
6 the lack of any appropriate placement for J.H., which
7 caused J.H. to have to be unilaterally placed.

8 Petitioners believe this Court, after this Court hears
9 the testimony and examines the documentary evidence,
10 that this Court will find in favor of the petitioners.

11 THE COURT: Thank you.

12 MS. WARSHAW: Thanks.

13 THE COURT: First witness?

14 MS. HOWLETT: Thank you, Your Honor. I'm just
15 going to grab her.

16 THE COURT: Sure. Other than have dead time,
17 I'm going to pause it.

18 MS. WARSHAW: Your Honor, I don't know who
19 these people are. Can they put on the record who they
20 are?

21 THE COURT: Wait for Ms. Howlett. We're on
22 the record. Wait for Ms. Howlett to come back.

23 MS. WARSHAW: Okay.

24 THE COURT: Other than have dead time, I'm
25 just going to pause it.

Colloquy

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1 (RECORDING PAUSED)

2 THE COURT: Okay, we're back on the record.

3 Have a seat right there, please.

4 MS. HOWLETT: Thank you, Your Honor.

5 THE COURT: While you were out of the room,
6 Ms. Warshaw inquired as to the two individuals seated
7 next to you. I told her to wait until you came back.
8 Would you identify them?

9 MS. PANTALEO: Danielle Pantaleo of Cleary
10 Giacobbe.

11 THE COURT: How are you?

12 MS. PANTALEO: Good. Good morning.

13 MR. REINEK: Good morning, Your Honor.
14 Michael Reinek (phonetic) for the District (out of
15 microphone range).

16 THE COURT: Okay. How are you?

17 Good morning. Ready to testify?

18 THE WITNESS: Yes, sir.

19 THE COURT: Raise your right hand.

20 J O S E P H M I C H A E L C U S A C K, RESPONDENT'S
21 WITNESS, SWORN.

22 THE COURT: Thank you. Would you state your
23 full name and spell your last name, please?

24 THE WITNESS: Joseph Michael Cusack, C-U-S-A-
25 C-K.

Colloquy / Cusack - Direct

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1 THE COURT: C-U-S-A-C-K.

2 THE WITNESS: Yes, sir.

3 THE COURT: Go ahead.

4 MS. HOWLETT: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MS. HOWLETT:

6 Q Good morning.

7 A Good morning.

8 Q Joe -- can I call you Joe?

9 A Sure, absolutely.

10 Q Okay. It's a little less formal.

11 Just for purposes of the Court, can you just
12 describe your position and place of employment?

13 A Sure. I'm a guidance counselor at West Morris
14 Central High School. I've been there since July of
15 2007 and I'm a counselor for approximately 220
16 students.

17 Q And what are some of your duties as guidance
18 counselor at West Morris Central?

19 THE COURT: Hold on. Sorry about that. Thin
20 walls.

21 THE WITNESS: So, primary is, I'm an
22 educational specialist, so I monitor students' academic
23 progress. I make sure that their graduation
24 requirements are met. I advise students on college
25 application process, career planning. If a student is

Cusack - Direct

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1 in a situation where we'd require medical 504, we'll
2 implement that through the I&RS committee, CST
3 evaluations. I participate in all of those meetings as
4 the guidance counselor.

5 BY MS. HOWLETT"

6 Q And you said you were employed since 2007?

7 A In West Morris Central, correct.

8 Q And then what did you do before that?

9 A Prior to that, I was a history teacher at Roxbury
10 High School since '96.

11 Q Anything before that or --

12 A College.

13 Q College.

14 A I graduated college in '95.

15 Q And where did you go to college?

16 A Sienna College in Loudonville, New York.

17 Q And did you get a degree there?

18 A Yes, I have a bachelor of arts in history and a
19 secondary education certification from the State of New
20 York.

21 Q And do you have any additional -- like a
22 master's degree or anything?

23 A Yes, I have a master's degree from Montclair State
24 University in master of arts and social sciences with a
25 concentration in history in 2002 and I earned my school

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1 counseling -- master's in school counseling from
2 Centenary College -- then Centenary College, it's now a
3 university -- in Hackettstown in 2000 and -- oh boy --
4 six -- no, seven.

5 Q And what about licenses? Do you have any
6 licenses through the State or --

7 A Yes, I have a standard New Jersey teaching
8 certificate in social studies and a school counseling
9 certificate, New Jersey State School Counseling, as
10 well as a supervisor's certification and a director of
11 school counseling -- director of guidance certification
12 as well.

13 Q Okay. Anything else you want to tell us
14 about yourself?

15 A No, I think that's good.

16 Q Okay. So let's talk. You know why we're
17 here, the student that we're talking about.

18 MS. HOWLETT: For purposes of the record, can
19 we use her name or would you rather initials?

20 THE COURT: It doesn't matter to me, but I
21 think, probably, let's just use the initials because
22 for some reason on education matters, we've been
23 getting a lot of OPRA requests, so let's not use the
24 name.

25 MS. HOWLETT: That's fine, Your Honor. Just

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1 for clarification.

2 BY MS. HOWLETT:

3 Q So we're going to refer to the student as

4 J.H.

5 A Okay.

6 Q So, can you just tell us, just off the bat,
7 how you first knew of J.H., how you first learned about
8 her?

9 A Sure. Well, she was added to my caseload back in
10 -- when she was in the eighth grade. She was a -- you
11 know, we would have -- we typically do -- and again, I
12 can't remember the details, but when we have incoming
13 eighth graders, we do meetings where they're assigned
14 to our -- and we develop a schedule for the incoming
15 year. I've worked with J.H.'s parents in the past and
16 with two of their other sons -- I know they have three.
17 I believe one other son had a -- yes, three sons -- had
18 a different counselor. But I have worked with the
19 family since probably 2008 or nine.

20 UNIDENTIFIED FEMALE: 2008.

21 THE WITNESS: Yes, yes. Oh, I'm sorry. Yes,
22 so around there. So, then J.H., when she enrolled in -
23 - she started in September, you know, I worked with her
24 as her guidance counselor.

25 BY MS. HOWLETT:

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1 Q And that was, for the Court's purpose,
2 September of what year?

3 A September of 2015? Hold on. Can I refer to --

4 Q No.

5 A Okay. All right.

6 Q Sorry. To your best recollection.

7 A To my best recollection, I think her -- so, she's
8 a junior now, so this is 17/18, so 15/16. So, '15,
9 yes.

10 Q Okay. If you don't --

11 A Yeah, I believe it was September of '15.

12 Q Did you have any first initial impressions of
13 J.H. when you met her? I don't know if you recall when
14 you met her.

15 A She's a lovely girl and she was a very, you know,
16 sweet young lady. She started off -- you know, I
17 always check in on my students as they start their
18 freshman year and there was nothing that -- nothing out
19 of the ordinary. She had -- yeah, she started off, in
20 her freshman year, she started off strong.

21 Q Did she come into the district as classified
22 for special ed?

23 A No, she did not.

24 Q And when she came into the district, did she
25 have a 504 plan?

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1 A Not that I'm aware of.

2 Q Anything like that, that you're aware of?

3 A No.

4 Q Is it part of your practice to review a
5 student's records when they come in?

6 A Yes.

7 Q So, would that include their elementary
8 school records?

9 A Typically, we could go back to the elementary
10 school records if we're doing an evaluation, however, I
11 would usually look at the eighth grade classes, you
12 know, their grades, comments from teachers, just to
13 kind of get a general overview of the student. I don't
14 look too far because I feel like we're a separate
15 district from the middle school and kind of like, you
16 know, kids are starting off with a clean slate and, you
17 know, I don't like to have a -- I like to develop my
18 own first impression of my students.

19 Q When J.H. enrolled, would you have reviewed
20 any of her records?

21 A I don't recall if I specifically -- I did, yes, I
22 would have reviewed her grades in her incoming records,
23 yes. And standardized testing is all in the file. All
24 of those things are there, yes.

25 MS. HOWLETT: Just give me one moment, Your

1 Honor.

2 MS. WARSHAW: I'm going to object to some of
3 this testimony because I know Your Honor said that
4 you're going to review the motions later on, but the
5 fact is that we did not ever receive her entire student
6 file, so I can't -- I'm at a disadvantage and my
7 clients are at a disadvantage because they have not
8 received their full -- the full standard file.

9 THE COURT: We went through this before. You
10 said you sent it, she said she didn't have it.

11 MS. WARSHAW: Your Honor, we haven't received
12 it all. We asked for things. My clients signed an
13 authorization November 3rd. They also signed an
14 authorization for Purnell School, October 17th, 2017.
15 We've never received the complete file at all.

16 THE COURT: What did you receive?

17 MS. WARSHAW: I didn't receive any of the HIB
18 investigations. I didn't receive anything regarding
19 disciplinary issues. I never received the e-mails and
20 the correspondence between the teachers and everything
21 regarding this child. I didn't receive anything
22 regarding the behavioral support program and the Being
23 Successful program. There were numerous other things
24 that I didn't receive and I've been asking for it. I
25 even had to OPRA request them and I still didn't

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1 receive them all and I keep getting denials.

2 THE COURT: Well, I'm not going to deal with
3 the OPRA, so --

4 MS. WARSHAW: Well, I --

5 THE COURT: I can't order anybody to comply
6 with it, so --

7 MS. WARSHAW: But, Your Honor, if he's going
8 to talk about student files and stuff, we don't have
9 the complete file and we never received it so --

10 THE COURT: I'm going to stop you for a
11 second. All he's talking about is the eighth grade
12 files, which they don't have the ability to send you.

13 MS. WARSHAW: Yes, they do. When we asked for
14 -- my clients signed --

15 THE COURT: The eighth grade files?

16 MS. WARSHAW: My clients --

17 THE COURT: It's a different district.

18 MS. WARSHAW: It doesn't matter. The eighth
19 grade files were brought to the high school and they
20 were --

21 THE COURT: Stop for a second.

22 Ms. Howlett?

23 MS. HOWLETT: Your Honor, the petitioners were
24 provided with a true and accurate copy of the student's
25 pupil records. If there are records that they claim

1 are in existence but aren't included, they're not in
2 existence and maintained by the District. These, as
3 Your Honor mentioned, are records that came from her
4 elementary school, and all these documents were
5 provided to petitioner's counsel in accordance with the
6 pre-hearing order.

7 MS. WARSHAW: Your Honor, they were not
8 provided to me.

9 THE COURT: All right, well --

10 MS. WARSHAW: The only time I received records
11 --

12 THE COURT: Stop, stop. She says "Yes," you
13 say "No," and what am I supposed to do, flip a coin?

14 MS. HOWLETT: They're in the binder, Your
15 Honor.

16 MS. WARSHAW: Your Honor, I --

17 THE COURT: You know what? If you want to
18 brief it, brief it. I'm going to allow him to testify
19 and if I have to -- if I have to make an exception, or
20 rather, if I have to go back to it and exclude some of
21 the testimony sometime in the future, I'm going to do
22 it. But, you know, unless you can -- if you're going
23 to submit a motion and say what you did in terms of
24 asking for information and what you didn't get and let
25 her respond to it -- this, I sent it; this, I didn't

1 get it. I don't have an ability to make a decision on
2 that because I don't know.

3 MS. WARSHAW: She can prove that she sent it
4 then, because, honestly, I don't have it and I got
5 different things under OPRA than I did under -- in her
6 binder, and I --

7 THE COURT: So I have an officer of the court
8 telling me she sent what she has and you're telling me
9 you didn't get it. Again, I don't know what to do.

10 MS. WARSHAW: So she --

11 THE COURT: I'm not going to flip a coin. I'm
12 going to let him testify. If you want to file a motion
13 about -- in limine regarding something, feel free to do
14 it. Right now, he's testifying.

15 MS. WARSHAW: Okay. Well, we already sent --
16 submitted motions before the trial started regarding
17 this. This is what we had submitted, so --

18 THE COURT: The only motion I have is the
19 District's motion.

20 MS. WARSHAW: Your Honor, we had asked for a -
21 - we had asked for a conference call and we've asked to
22 strike to strike the answer and for them not to be able
23 to present --

24 THE COURT: Well, you didn't file a motion.
25 Did you file a motion or did you --

Colloquy / Cusack - Direct

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1 MS. WARSHAW: I filed an informal motion to
2 the Court, yes.

3 THE COURT: Then I'll have to go back and
4 look. I don't see it.

5 MS. WARSHAW: A few weeks ago, March 27th,
6 actually.

7 THE COURT: Okay.

8 MS. WARSHAW: Okay. Thank you.

9 THE COURT: I'm going to let him testify.
10 Go ahead.

11 MS. HOWLETT: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MS. HOWLETT (CONT'D):

13 Q Mr. Cusack -- is it "Cusack" or --

14 A Correct. Cusack is fine.

15 Q Can you just turn -- there's a binder in
16 front of you with a bunch of documents. If you could
17 just flip to the tab marked 25 and if you can describe
18 what that document -- at the bottom it's marked --
19 excuse me -- it's marked "WM-110."

20 A Yes.

21 Q And if you could just describe to the Court
22 what that document appears to be.

23 A This appears to be a copy of her final eighth
24 grade report card.

25 (R-25 Marked for

Cusack - Direct

23

1 Identification)

2 Q And have you seen this before?

3 A Yes, I have.

4 MS. HOWLETT: Your Honor, respondent's move R-
5 25.

6 THE COURT: Ms. Warshaw?

7 MS. WARSHAW: No objection.

8 THE COURT: Okay. It's in.

9 (R-25 Entered into
10 Evidence)

11 BY MS. HOWLETT:

12 Q Mr. Cusack, I certainly don't want you to --
13 we can all read it, so we don't want you to, but if you
14 could just -- when you look at a student's report card
15 from their elementary school, what are some of the
16 things that you look at on a report card like this?

17 A I look for anything that seems out of place grade-
18 wise. I want to -- I'm looking for strengths; I'm
19 looking for weaknesses. The eighth grade, in looking
20 at this now, language arts would have been, you know,
21 towards the end of eighth, an area of weakness, for
22 example. She's a very talented musician. It doesn't
23 surprise me she had A plus's in band. She plays the
24 clarinet. So, yeah, so grades, I would look for that.
25 I would also look for other things that might give me a

1 red flag as to attendance issues, perhaps. As you can
2 see, she has, you know, several absences each quarter,
3 which is not unusual.

4 Q And would you also read the instructor
5 comments that are included?

6 A Yes. Yes, I mean --

7 Q And when you read J.H.'s report card, was
8 there anything, you know, really notable in here?

9 A No. I mean, just similar to my first impression
10 of her, you know, she's a pleasure to have in class.
11 You know, she's a cooperative student. You can see
12 some of these here -- "good effort," "satisfactory" --
13 shows -- you know, you can see in Spanish -- yeah.

14 Q So, in short, did this -- did J.H.'s report
15 card raise any red flags to you?

16 A No, not at all.

17 Q And do you also review standardized testing?

18 A Typically, only if it comes to a point where we
19 have to -- where we are going to be doing an I&RS
20 referral or a CST referral. That's not something I
21 would normally go -- for every one of my students, to
22 look into their file as they come in. If I'm seeing a
23 weakness -- let's say a student is struggling in math
24 and I -- the teacher is concerned that perhaps they're
25 at the wrong level, I would review their file and see

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1 if there is a pattern of weakness in math --
2 standardized testing results for math, as an example.

3 Q Would you have reviewed J.H.'s standardized
4 testing from elementary school?

5 A Not from elementary school. Typically -- I mean,
6 I believe -- again, I may have photocopied a couple of
7 the -- everything from sixth, seventh, and eighth
8 grade, NJ ASK results, yes. From the elementary
9 schools, most likely, no.

10 Q I'm sorry. I went to an elementary school
11 that was K to eight, so when I say "elementary school,"
12 I just mean the sending district.

13 A Oh, okay. Absolutely. Yes, I would have referred
14 to the most -- like sixth, seventh, and eighth grade, I
15 may have photocopied and I cannot remember. If it's in
16 this file, it would be in here somewhere. Maybe the
17 fifth grade scores or fourth or fifth grade scores may
18 be in there. But, yes, I would refer -- through the
19 process of evaluation, I would have reviewed those
20 results.

21 Q So now that we've clarified elementary school
22 --

23 A Yes, I'm sorry.

24 Q No, no, no, that's okay. That's my
25 misunderstanding.

1 Do you also review the report cards? You
2 said eighth grade -- I'm not testifying for you, but I
3 believe you testified earlier that you reviewed the
4 eighth grade report card.

5 A Yes.

6 Q Do you also review sixth and seventh grade as
7 well?

8 A If there were a need to do so, yeah. I mean, as
9 they're coming in, I'll look at the -- we do review the
10 eighth grade report cards when we have their meetings
11 in -- all eighth graders come up for a meeting at the
12 high school so they can get to see -- meet me, get to
13 know the building, and we develop their schedule
14 requests for the next school year, so I would refer to
15 the report card that we had as of that moment to
16 determine if the levels were the appropriate levels and
17 to kind of help the family to develop the best possible
18 schedule.

19 Q Do you recall whether you would have looked
20 at J.H.'s report cards from sixth and seventh grade?

21 A I do not recall.

22 Q Not a problem. Can I please ask you to turn
23 to R-34 and describe what that document is?

24 A Sure. R-34 is a copy of the NJ ASK Spring of 2014
25 standardized testing results in English language arts

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1 and mathematics.

2 (R-34 Marked for
3 Identification)

4 Q And have you seen this document before?

5 A Yes, I have.

6 Q And it's in regard to what student?

7 A J.H.

8 MS. HOWLETT: Your Honor, we move R-34.

9 THE COURT: Any objection?

10 MS. WARSHAW: No objection.

11 THE COURT: Okay.

12 (R-34 Entered into
13 Evidence)

14 BY MS. HOWLETT:

15 Q And just because there's not -- we don't have
16 to go into all the sub --

17 A Sure.

18 Q -- subtesting, but if you could just indicate
19 -- like, interpret this for us --

20 A Sure.

21 Q -- what the -- what the results of her New
22 Jersey ASK scores were.

23 A So, for the New Jersey ASK, a proficient score is
24 200, a minimum of 200, and the proficient range is 200
25 to 249. Anything above 250 is considered advanced

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1 proficient. Anything below 200 is considered to be
2 partially proficient. J.H. scored 242 in English
3 language arts, and 250, at the advanced proficient
4 range, in mathematics.

5 Q So did these scores raise any raise flags to
6 you?

7 A Not at all, no.

8 Q And if you could just turn to R-33, please,
9 and describe for us what that document is.

10 A Those are the standardized testing results for
11 J.H. from the previous school year, 2013, and same --

12 (R-33 Marked for
13 Identification)

14 Q Hold on.

15 A Did I refer to the wrong one?

16 Q No, you're fine. Just hold your horses.

17 A Okay. Sorry.

18 Q Have you seen this document before?

19 A Yes, I have.

20 Q Okay. And it's -- and you said it's for what
21 student?

22 A J.H.

23 MS. HOWLETT: Your Honor, we would like to
24 move R-33.

25 THE COURT: Any objection?

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1 MS. WARSHAW: No, Your Honor.

2 THE COURT: Thank you.

3 (R-33 Entered into

4 Evidence)

5 BY MS. HOWLETT:

6 Q Now we can talk about it.

7 A Okay.

8 Q And can you do the same thing --

9 A Sure.

10 Q -- and just summarize what this -- these
11 results mean?

12 A Again, English, language arts, and mathematics,
13 she scored -- same criteria -- above a 200 is
14 proficient; above 250 is advanced -- she scored 225 in
15 both English language arts, and mathematics.

16 Q And did those results raise any red flags for
17 you?

18 A No.

19 Q And can you turn to R-35? It's marked "128"
20 on the bottom.

21 A Yes.

22 Q A little hard to see. And can you describe
23 what this document is? This one looks a little
24 different.

25 A Yes, this appears to be a photocopy of a sticker.

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1 Oh, no, I'm sorry. This is -- this is her permanent
2 record card, so, yes, she is -- this is the science.
3 Should I go on or do I need to --

4 Q Yeah, describe it for us, yeah.

5 A I'm sorry. Yes, this is the -- this is the State
6 assessment in science.

7 (R-35 Marked for
8 Identification)

9 Q And it's for what student?

10 A J.H.

11 Q And is it -- is there a time frame that this
12 is for, these results?

13 A This is May of 2015, so she would have -- right
14 before she entered. She was in the eighth grade, so
15 right before she entered the high school.

16 Q Have you seen this before?

17 A Yes.

18 MS. HOWLETT: Your Honor, we'd like to move R-
19 35?

20 THE COURT: Objection?

21 MS. WARSHAW: No objection.

22 (R-35 Entered into
23 Evidence)

24 BY MS. HOWLETT:

25 Q And can you just describe for us what the --

1 what this means?

2 A It's, of course, an assessment in science and she
3 scored 250, at the advanced proficient level.

4 Q Thank you. So let's talk about J.H.'s ninth
5 grade year. You testified earlier that she was -- that
6 you were assigned to her as a counselor.

7 A Yes.

8 Q So, were there any issues with her in ninth
9 grade that you were aware of?

10 A No, nothing stands out at all that she -- if I
11 recall, she had strong grades. There was -- I can't
12 remember off the top of my head what her report card
13 was, but that would --

14 Q Do you remember receiving any reports from
15 teachers --

16 A No.

17 Q -- that there were any issues?

18 A Nothing. Nobody had received -- had reached out,
19 that I remember, had reached out to me, expressing any
20 concern with her, you know, academically or socially.

21 Q Do you recall any absence issues in ninth
22 grade?

23 A I do recall, in discussing -- in reviewing her
24 record, that she did have -- I believe it was -- again,
25 I'm just -- this is just from memory; it may not be the

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1 exact number -- but around 16 or 15 unexcused absences,
2 but there was no pattern of anything that was alarming.
3 She -- they were scattered throughout -- spread
4 throughout the entire school year, one day here, one
5 day there, a couple of two days in a row, if I recall.
6 I believe, at some point towards the very end of the
7 school year, she had several medically excused
8 absences, according to the record. And in order to
9 have a medically excused absence, the family just
10 provides a doctor's note, so that obviously would have
11 happened here.

12 Q To your recollection, during ninth grade, did
13 the parents ever reach out to you with any concerns
14 about J.H. at school?

15 A I mean, not that -- not that I recall any --
16 nothing, I mean, that would have -- I can't -- I can't
17 say for certain, but I do not recall any phone calls
18 expressing, you know, concern about academics or
19 anything else.

20 Q Mr. Cusack, can you just turn to R-26, please
21 --

22 A Okay.

23 Q -- for us? It's marked "112" at the bottom.
24 And just describe what that document is.

25 A Sure. This is a copy of the official student

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1 transcript for J.H. It is -- it basically is her first
2 grade -- first year of classes, so ninth grade classes.
3 There is a list of the courses, the levels at which she
4 took each course, the final course grade, and the
5 credit amounts she earned, and then the course -- the
6 block to the right is 16/17, her sophomore year, those
7 were the courses that she was enrolled in during the
8 sophomore year. So this is not a final transcript of
9 her sophomore year; this is the final transcript that
10 we had on file as of -- when I generated the CST
11 evaluation.

12 (R-26 Marked for
13 Identification)

14 Q So have you seen this document before?

15 A I have seen this document, yes. I'm sorry -- yes.

16 Q That's okay.

17 MS. HOWLETT: Respondent would like to move R-
18 26, Your Honor.

19 THE COURT: Any objection?

20 MS. WARSHAW: No objection.

21 (R-26 Entered into
22 Evidence)

23 BY MS. HOWLETT:

24 Q Mr. Cusack, does this -- does this accurately
25 reflect J.H.'s -- the classes which she was enrolled in

1 and her grades for her ninth grade year?

2 A Yes, it does.

3 Q And can you tell us where those are shown? I
4 think you kind of told us before, it might be on the
5 left hand side?

6 A On the left column is the 15/16 school year, which
7 is the final -- any course that we have a final grade
8 on is from the 15/16 school year and is in the left
9 column, I'm sorry.

10 Q We're just going to talk about 15/16 just for
11 a minute.

12 A Sure.

13 Q We're in ninth grade for now. Can you just
14 tell us, what are the -- what are the "AV's" next to
15 the --

16 A Those reflect advanced level, so -- yes, we have
17 several advanced levels.

18 Q Yeah, can you describe the way -- every high
19 school is a little bit different, so can you describe
20 the different levels of the core classes?

21 A Absolutely. So, the levels start off -- if a
22 student is -- comes in under the umbrella of the child
23 study team, they may have self-contained courses, which
24 is very small level classes -- very small group of
25 students. The next level up would be studies level.

1 That's for students that are fully mainstreamed.
2 There's usually two teachers in the room, a
3 collaborative. And the next level above that is
4 academic. That is the kind of first tier or your
5 college prep courses. And then the next level is
6 advanced level, and beyond that is honors, for
7 freshman. The only --

8 Q A lot of different levels.

9 A There are a lot of levels, yes. The only
10 exception to that -- there are a couple of things;
11 maybe I'll just clarify. Advanced Algebra I is the
12 highest level any student can take in Algebra I; there
13 is no honors level. Band is academic. There is --
14 students do not have the option to take an elective at
15 a higher level than academic until their sophomore
16 level. And French I -- all foreign language that we
17 offer, the first and second year are labeled as
18 advanced.

19 Q So, are all these courses that say "AV,"
20 those would be the advanced block of that course?

21 A Yes.

22 Q And can you -- again, we can all read, so you
23 don't have to go verbatim -- but can you summarize, you
24 know, her grades, or maybe indicate what her grade
25 point average would have been in ninth grade?

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1 A Absolutely. I mean, as of -- she was just on the
2 border of a -- she has a 3.48 GPA as of the end of her
3 freshman year -- a very strong GPA; that's honor roll.
4 Yeah, very -- she had excellent grades.

5 Q When you saw this report card, did you have
6 any concerns about J.H. academically?

7	A	No.
---	---	-----

8 Q Would she have also taken standardized
9 testing during her ninth grade year?

10	A	She most likely would have, yes.
----	---	----------------------------------

11 Q Can I just have you turn to R-36, please?

12 And just describe to the Court what that document is.

13 A Sure. This is the PARCC assessment, so she
14 performed on the --

15	(R-36 Marked for
16	Identification)

17	Q	Hold on.
----	---	----------

18 A Oh, I'm sorry. Yes, PARCC assessment.

19 Q And it's for what student?

20	A	J.H.
----	---	------

21 Q And is there, like, a time frame that this
22 would pertain to or taken?

23 A This would have -- this would have been in the
24 spring of her -- of the ninth grade year; I believe
25 April. It was held at that time, yes.

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1 Q That's what time of year they take it?

2 A I believe -- yes, it's always in the Spring. Each
3 year, the actual testing dates fluctuate, but it is
4 typically April or May.

5 MS. HOWLETT: Your Honor, we'd like to move R-
6 36.

7 MS. WARSHAW: No objection.

8 THE COURT: Thank you.

9 (R-36 Entered into
10 Evidence)

11 BY MS. HOWLETT:

12 Q And I'm sorry. And you've seen this --

13 A Yes, I have.

14 Q -- have you seen this document before? And
15 can you just describe for the Court what the results of
16 this assessment mean?

17 A So, this is the English language arts literacy
18 report and she performed -- she earned a 758 and that
19 is -- that is proficient in the language arts testing.

20 Q And can you just flip one more over to R-37
21 and just describe what this document is?

22 A Sure. This is the mathematics assessment for the
23 2015/16 school year, also taken in spring of her ninth
24 grade year.

25 (R-37 Marked for

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1 Identification)

2 Q And have you seen this document before?

3 A Yes, I have.

4 MS. HOWLETT: Your Honor, I would like to move
5 R-37.

6 MS. WARSHAW: No objection.

7 THE COURT: Thank you.

8 (R-37 Entered into
9 Evidence)

10 BY MS. HOWLETT:

11 Q And can you just do the same thing and
12 indicate or interpret what this report means?

13 A Sure. So, in this report, this is the mathematics
14 assessment, and she did not achieve the level four --
15 it's approaching expectations is what she's earned and
16 that is a 735; 750 would have been the -- I don't want
17 to say passing mark, because it's -- it's basically
18 saying it's -- met expectations is level four at 750,
19 so she was just under that.

20 Q Anything concerning about this report?

21 A Nothing that -- I mean, she was in the -- right in
22 the middle of middle range. She's approaching
23 expectations. This is the first time a lot of students
24 took this test. It was a computerized test. The first
25 time PARCC was administered to these students and it

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1 was a -- it's not an alarming result. If she were down
2 in the -- you know, if she were down in the lower --
3 level one or level two, having performed as well as she
4 did in the other assessments, I would have -- I would
5 have been concerned. But a 735 would not --- would not
6 alarm me.

7 Q Does this document indicate what the state
8 and district averages are also?

9 A I'm sorry. I'm not aware of the actual averages
10 for the state or district.

11 Q If you take a look at this document --

12 A Yes. Oh, I'm sorry, yes. Yes, in the -- how
13 student -- how she compared with the other students, in
14 the lower right corner, how students in New Jersey
15 performed. The district average was 741 and the state
16 average was 741 and J.H. scored a 735, so she was --
17 again, she was six points under the district and state
18 average. I'm sorry -- six points under.

19 Q Let's move onto tenth grade.

20 A Okay.

21 Q Anything notable between summer of ninth
22 grade and tenth grade that you're aware of?

23 A No, nothing.

24 Q And then what happens at the beginning of the
25 tenth grade year? I guess that would be 16/17 (out of

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1 microphone range.)

2 A Well, I mean, students report and they -- I mean,

3 they're the -- they've been there before and they

4 basically just roll into their first day schedule.

5 First day is -- all classes meet. We have a rotating

6 schedule, so the first class -- all eight classes would

7 have met that first day of school.

8 Q Do you remember anything notable about J.H.?

9 Did she appear for school?

10 A On the -- on the first day, yes, the --

11 Q To your recollection.

12 A To my recollection, she was present in the opening

13 days of school.

14 Q And can you just turn to R-27 for me, please?

15 It's marked "113" at the bottom. And just describe

16 what this document is, at least that first page, for

17 the Court.

18 A This is a copy of J.H.'s course schedule for her

19 sophomore year, her tenth grade year.

20 (R-27 Marked for

21 Identification)

22 Q And that year was, as we've previously

23 discussed?

24 A 2016/17.

25 Q And have you seen this document or generated

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1 it?

2 A Yes, I have.

3 MS. HOWLETT: Your Honor, we'd like to move R-
4 27.

5 MS. WARSHAW: No objection.

6 THE COURT: Okay.

7 (R-27 Entered into
8 Evidence)

9 BY MS. HOWLETT:

10 Q And are these courses consistent with what
11 she did in ninth grade? Would this be the natural
12 progression?

13 A Yes, exactly. She's moving -- she's moving along
14 at the progression that we would expect, having
15 performed as well as she did in her ninth grade year,
16 yes.

17 Q And you previously testified that the "AV"
18 next to the course name indicates that it's an advanced
19 level course.

20 A That's correct.

21 Q Is that also true for this?

22 A Yes, it is.

23 Q And to your recollection, this accurately
24 reflects the courses that J.H. was enrolled in?

25 A Yes, it does.

1 Q Did you receive any correspondence or any
2 telephone calls or what happened with J.H. after, you
3 know, the commencement of the school year?

4 A Sure. In late September, mid to late September --
5 and again, I cannot remember the exact date -- I did
6 receive a phone call from Ms. H., from J.H.'s mom,
7 indicating that she was having a difficult time and
8 that she was going to be out of school. Typically, if
9 a student is going to be out of school for a few days -
10 - if they were having her, you know, checked out -- I
11 would gather work from the teachers, communicate that
12 to the teachers, that the student is going to be out
13 for -- we're not sure. You know, at that point in
14 time, obviously, we didn't know how long. So, you
15 know, we requested work for her.

16 Q So you would have done that? You would have
17 reached out to the teachers?

18 A Yes, yes.

19 Q Were you surprised to hear that she was
20 having trouble?

21 A Yes. Yeah, I was. You know, she had -- again,
22 freshman -- ninth grade year went well, and again, she
23 -- she's the type of student that, occasionally, I
24 would check on and we would have met in her ninth grade
25 year to schedule, and other than that, I mean, nothing

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1 -- again, no red flags until that -- late that month.

2 Q So that was late September, you testified.

3 A Yes.

4 Q So then what happened after you had that
5 initial -- to your recollection -- after that initial
6 communication from the parent or from Mom?

7 A So, I -- you know, so J.H. continued to be out and
8 then I received another communication indicating that
9 she was going to be starting a program at ICCPC, and if
10 I recall correctly, it was -- depression and anxiety
11 was what the -- what she -- J.H.'s Mom had indicated.

12 THE COURT: Did you say it was depression and
13 anxiety?

14 THE WITNESS: I believe that's what -- I
15 believe that's what I recall.

16 THE COURT: Okay. Thank you.

17 Proceed.

18 MS. HOWLETT: We'll clear it up.

19 BY MS. HOWLETT:

20 Q Mr. Cusack, could you turn to R-39, please?

21 A Sure.

22 Q Thank you. And just describe for the Court
23 what this document is.

24 A This is a note from J.H.'s parents, dated October
25 10th, 2016.

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1 (R-39 Marked for
2 Identification)

3 Q Have you seen this document before?

4 A Yes, I have.

5 Q And did you receive a copy when it was sent
6 to you?

7 A Yes.

8 MS. HOWLETT: Your Honor, I'd like to move R-
9 39, please.

10 MS. WARSHAW: No objection.

11 (R-39 Entered into
12 Evidence)

13 BY MS. HOWLETT:

14 Q Now I'm just going say you can describe what
15 this document is indicating or what your impressions
16 were when you received it.

17 A So, it basically verifies what -- you know, the
18 conversation that I had with J.H.'s Mom and Dad. They
19 were both in communication with me. It's that she has
20 -- should I read the first line?

21 Q You don't have to read it verbatim --

22 A Okay.

23 Q -- but just what your -- your takeaway was.

24 A It verified -- sure -- that she was -- that due to
25 what they describe as "crippling anxiety and

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1 depression," that she was not able to attend school at
2 that point in time and that they were requesting home,
3 you know, tutors until she gets back on her feet, is
4 what they say.

5 Q And will you please just flip one more, to R-
6 40?

7 A Sure.

8 Q And describe what this document is for the
9 Court, please.

10 A This is a note from Plaza Family Medical, I
11 imagine her pediatrician, which verifies from a -- from
12 a medical professional that -- that J.H. was being seen
13 in their office for treatment of depression and
14 anxiety.

15 (R-40 Marked for
16 Identification)

17 Q And, I'm sorry, did you say the date for the
18 Court?

19 A This was -- I'm sorry -- December 11th, 2016.

20 THE COURT: October 11th.

21 THE WITNESS: I'm sorry. October 11th, 2016.

22 Thank you.

23 BY MS. HOWLETT:

24 Q And have you seen this document before?

25 A Yes, I have. Yes, I have.

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1 Q Thank you.

2 MS. HOWLETT: Your Honor, I would like to move
3 R-40, please.

4 MS. WARSHAW: No objection.

5 (R-40 Marked for
6 Identification)

7 BY MS. HOWLETT:

8 Q And I'm sorry, you started to describe it,
9 but now, if you could just let us know what your
10 impressions of the letter were.

11 A In order to start home instruction in our
12 district, it's policy that we receive a note from the
13 family requesting it and a medical note from a doctor,
14 verifying that this condition exists. And therefore,
15 once we have those two documents, I am then able to
16 begin the process of home instruction. So, it's a much
17 -- it's the next step involved in, like, kind of, you
18 know, instead of just sending work home, now we would
19 be providing actual tutors because she has -- you know,
20 to supplement the classroom time.

21 Q And did you start that process in accordance
22 with the policy?

23 A I did. Well, I started this and, well, to my
24 recollection, I did start that but then she was, I
25 believe, almost immediately after this, involved in the

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1 ICCPC and a private tutoring company that works for --
2 they contract with that organization -- took over the
3 actual tutoring.

4 Q Can you turn to R-13, please?

5 A Okay.

6 Q Can you describe what this document is?

7 A So, this is a document from ICCPC, indicating that
8 J.H. was now in their care, verifying that she would
9 not be out. So, once we received this document -- I'm
10 sorry.

11 (R-13 Marked for
12 Identification)

13 Q Have you seen this document before?

14 A Yes, I have. Yes, I have.

15 Q And can you just tell us what the date is on
16 this?

17 A October 20th, 2016.

18 Q Thank you.

19 MS. HOWLETT: Your Honor, I would like to move
20 R-13.

21 MS. WARSHAW: No objection.

22 (R-13 Entered into
23 Evidence)

24 BY MS. HOWLETT:

25 Q Now you can tell us what -- what the document

1 says or what your impressions of the document were.

2 A Sure. So, this document indicates to me --
3 indicated to me that J.H. was not going to be returning
4 to West Morris Central anytime in the very near future
5 and they indicated initially that it was a two week
6 window that they were looking at. She would be
7 attending their partial program from 9 a.m. to 2:30
8 p.m., which is obviously during the course of our
9 normal school day, so they were requesting that we
10 transition over to American Tutor and -- for homebound
11 instruction. So, I can't recall how that works. I
12 believe there's an afternoon component, after the
13 morning therapy, the therapeutic component, where they
14 -- the tutors would work on the students on the
15 educational.

16 Q So, do you recall what happened after? So,
17 you get this document. You've already testified that
18 the private tutoring company had taken over.

19 A Yes.

20 Q Do you recall what happened next? This is
21 the end of October?

22 A So, she enrolled in the program. We would -- this
23 letter would have basically indicated that she was out
24 of -- going to be out of the district, out of the
25 building. There's a designation in the attendance

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1 record, I believe it's HH, that they put in as an -- or
2 MED, which is medical. I cannot recall which one went
3 in, but it just indicates that she's not going to be
4 attending class in the building and she was receiving
5 her partial -- the -- she was attending -- to the best
6 of my knowledge, she was attending that program at
7 ICCPC.

8 Q And to your recollection, did you have any
9 telephone conversations? You said earlier that you
10 were in touch with the parents.

11 A Yes.

12 Q Can you just describe what some of those
13 communications were like?

14 A Well, just checking in, you know, updates, to see
15 how she's doing. I recall that the -- I believe the
16 therapist had reached out to me at some point to --
17 just to, you know, just to kind of update. Mostly, I
18 was in communication with the tutor company, just to
19 make sure that, you know, the educational component was
20 being taken care of.

21 Q And then, was J.H. later cleared to return to
22 school?

23 A Yes, she was.

24 Q And discharged from -- was she discharged, to
25 your recollection, from whatever program she was in?

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1 A Yes. We would not have -- she would not have been
2 able to attend if we did not have an actual note from
3 ICCPC clearing her to return to school.

4 Q Can you please turn to R-14 and describe what
5 that document is for the Court?

6 A This document is dated December 12th of 2016. It
7 is from ICCPC and it's signed --

8 THE COURT: December 2nd.

9 THE WITNESS: December 2nd -- I'm sorry --
10 December 2nd.

11 BY MS. HOWLETT:

12 Q That's okay.

13 A It is signed by the program psychiatrist, as well
14 as the senior clinician, and that -- in the note, it
15 states that she is -- J.H. is medically cleared to
16 return to school on Wednesday, December 7th. The plan
17 would be for her to be with us for half days and then
18 she would continue with the program at ICCPC -- I
19 believe it would be the therapeutic component -- in the
20 afternoon.

21 (R-14 Marked for
22 Identification)

23 Q And have you seen this document before?

24 A Yes, I have.

25 MS. HOWLETT: Your Honor, I would like to move

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1 R-14.

2 MS. WARSHAW: No objection.

3 THE COURT: All right.

4 (R-14 Entered into
5 Evidence)

6 BY MS. HOWLETT:

7 Q And does this document, did it make any other
8 recommendations to you --

9 A Yes.

10 Q -- about what J.H. might need when she
11 returns to school?

12 A Yes. So, one of the things -- and anytime, with a
13 student coming back into the building, we always look
14 at a 504 plan. Medical documentation -- again, this
15 sufficed. And they -- we always ask -- in this
16 situation, I always defer to the professionals that
17 have been working with her. So we basically, almost
18 verbatim, put in these recommendations into the 504
19 plan that I developed with Mrs. H. and J.H.

20 Q And is it your common practice to review the
21 medical information and then incorporate that into a
22 504 plan?

23 A Yes, yes.

24 Q So what happened after you received that
25 letter, do you recall?

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1 A So, I would have scheduled a meeting with J.H. and
2 her Mom and that would -- the purpose of that meeting
3 was to re-enter the building and also to make sure that
4 when she re-entered, that this 504 plan would be in
5 place with the supports that were recommended from --
6 from the therapist the psychiatrist, and that did take
7 place. The 504 plan was in place when she returned.

8 Q So did you develop a 504 plan for --

9	A	Yes, I did.
---	---	-------------

10	Q	Can you just turn to R-1, please?
----	---	-----------------------------------

11	A	Sure, yes.
----	---	------------

12 Q And can you just describe this document to
13 us?

14 A Sure. This document is the 504 plan that was
15 developed. The date of the meeting was December the
16 7th, 2016.

17	(R-1 Marked for
18	Identification)

19 Q And did you prepare this plan?

20	A	Yes, I did.
----	---	-------------

21 MS. HOWLETT: Your Honor, I would like to move
22 R-1.

23 MS. WARSHAW: No objection.

24 THE COURT: Okay.

25	(R-1 Entered into
----	-------------------

1 Evidence)

2 BY MS. HOWLETT:

3 Q And so, what was the purpose of the 504 plan,
4 if you could just generally talk about it.

5 A So, in this case with J.H., it was to ensure that
6 there was a smooth transition back to the high school.
7 So, she had been out at this point for over two months
8 and any time that a student is out of the building for
9 that long, you know, there's a concern that they may
10 have difficulty acclimating back, especially with, you
11 know the diagnosis that J.H. has. So we developed
12 these accommodations to make sure that she was as
13 comfortable as possible, that she had the support in
14 the building that she needed from a psychological
15 standpoint, and also the support from an academic
16 standpoint as well.

17 Q And there's not that many, I'm not going to
18 make you read them verbatim, obviously, but if you
19 could just describe what the accommodations are that
20 are provided in the 504?

21 A Absolutely. You know, we wanted to reduce as much
22 anxiety as possible, so anytime there was an
23 assessment, we offered extended time and we also
24 offered the opportunity to take those assessments in a
25 quiet setting, so she would not have had to take them

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1 in a classroom with the other students. One thing that
2 we viewed, that we've found with students with anxiety,
3 if they're allowed breaks, where the teacher is fully
4 aware that they will not be in the room. They just kind
5 of get up and they walk and we call it a walking pass.
6 Some students just need to get a little of that nervous
7 energy out and they walk around the hall and then they
8 return to class. So, we gave J.H. that flexibility.
9 We have a room called the Zen Zone in our building
10 where it's basically about the size of this room. It's
11 dark, dim lit. It's got water features. It's got
12 aroma therapy going. It's just a quiet place of
13 relaxation where students who are stressed out can
14 access if they need to. And then, she, of course, had
15 access to counseling in the guidance and the CST as
16 well. Even though she did not have a -- she was not
17 under the umbrella of the CST at that time, we do have
18 psychologists on hand that were willing to meet with
19 her.

20 Q And were -- it indicates on this document --
21 it appears to indicate that Mom and J.H. were present.
22 Is that accurate?

23 A Yes, that is correct.

24 Q And did they offer -- did they offer insight
25 at the meeting or any comments on the 504 plan?

1 A Yeah, I recall discussing what the recommendations
2 were from the middle school -- I'm sorry -- from ICCPC
3 and, you know, that's why, you know, the three of us
4 worked on this together.

5 Q Did they raise any concerns about what was in
6 here?

7 A Not that I recall.

8 Q And did the parents sign the 504 plan?

9 A Yes, they did.

10 Q And that's indicated where?

11 A On the second page, WM002, the participants,
12 parent and student.

13 Q Did they sign anywhere else on this document?

14 A The back page of where they -- the notification of
15 rights, parental, is on the back and Mrs. -- and J.H.'s
16 Mom and I signed and dated that on December the 7th.

17 Q Thank you. So what happened after the 504
18 plan meeting, from the entry meeting?

19 A So, J.H. returned to school for that day. I
20 recall specifically going -- at some point, seeing her,
21 checking in on her to see how she was doing. I
22 specifically recall her smiling and saying things are
23 okay. And at that moment -- you know, this was earlier
24 on in the day, and then I don't remember -- and after
25 that, the next communication I remember was, I believe,

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1 that Monday, where I received, I believe, an e-mail
2 from J.H.'s Mom saying that there was a setback on
3 Friday and that she would not be in school Monday.

4 Q Were you aware of any setbacks or issues that
5 had happened at school?

6 A Not -- no, no -- I did not receive any
7 communications from any teachers or anyone saying that
8 there was an issue that -- no.

9 MS. HOWLETT: One moment, Your Honor. I'm
10 sorry.

11 BY MS. HOWLETT:

12 Q So, to your recollection, J.H. did not return
13 after that?

14 A No, she did not come back into the building after
15 that -- I believe a day and a half that she was there,
16 perhaps.

17 Q Now we're talking about getting up to the
18 break, right?

19 A Yes, it's coming up at this point. We're in
20 December, so it's coming up to the holiday break, yes.

21 Q Do you recall receiving any subsequent
22 correspondence about -- maybe after break, about what
23 was going to happen with J.H., whether she was going to
24 return to school or receive additional treatment?

25 A Yes. So, I did receive communication from J.H.'s

1 parents, that they were going to take the break to
2 decide what course of action they were going to take.
3 At this point, I think, to them, I believe it was
4 clearly difficult for her to return to West Morris on a
5 full-time basis and they had mentioned specifically
6 that they were going to potentially withdraw her and
7 enroll in a small, private school. I believe American
8 Christian was what they specifically mentioned as an
9 option they were exploring. I don't recall if they
10 ever -- if they actually went and visited or not. I
11 don't know.

12 Prior to that, you know -- yes -- or the other
13 option was to work on a child study team evaluation to
14 determine if she would remain in the district and to
15 see if she qualified for CST assistance. And the
16 discussion was, would there be possibly an out-of-
17 district placement that could be appropriate for her
18 and I explained that we can't -- that's not something
19 we could even entertain until she was evaluated and
20 determined to be eligible by the child study team. So
21 they said they were going to take the holiday break to
22 discuss that as a family and to see if they were going
23 to either withdraw her, enroll in a smaller school, or
24 pursue the CST evaluation.

25 Q And do you recall what happened after break?

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1 A Yes, I believe there was -- I received an e-mail
2 indicating that they would like to pursue the CST
3 evaluation and then I -- there should be a packet in
4 here somewhere which is the full report that I
5 generated, with the supporting documentation.

6 THE COURT: Just for the record, CST is child
7 study team.

8 THE WITNESS: Yes, sir.

9 MS. HOWLETT: Yes, Your Honor.

10 THE COURT: We all know what that means, but
11 somebody reading a transcript might not.

12 THE WITNESS: Sure, sure.

13 BY MS. HOWLETT:

14 Q Mr. Cusack, could you just turn to exhibit R-
15 2?

16 A Sure.

17 Q (Out of microphone range) and can you
18 describe what this document is?

19 A This is our standard special education referral
20 form.

21 (R-2 Marked for
22 Identification)

23 Q And have you seen this before?

24 A Yes, I have.

25 Q Did you fill this out or did someone else

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1 fill it out?

2 A I filled it out.

3 MS. HOWLETT: Your Honor, I would like to move
4 R-2.

5 THE COURT: Any objection?

6 BY MS. HOWLETT:

7 Q And now, this document, can --

8 THE COURT: (Out of microphone range)

9 MS. HOWLETT: I'm sorry.

10 MS. WARSHAW: No objection.

11 MS. HOWLETT: I'm sorry, Your Honor.

12 THE COURT: Thank you.

13 (R-2 Entered into
14 Evidence)

15 BY MS. HOWLETT:

16 Q You started to describe before, what is this
17 used for?

18 A So, this is used for determining -- like,
19 basically, this is the form that's submitted to the
20 child study team, where we support -- where I advocate
21 on behalf of my student to establish -- to start this
22 child study team process -- referral process.

23 Q Is it in triplicate form or something?
24 Because it's tough to read, like, the bottom. Is it a
25 -- is it just a poor copy?

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1 A No, it's just a standard -- it's actually -- I
2 think it's bright orange, so that might be why it's
3 dark.

4 Q Right.

5 A And I don't know why it was cut off on the bottom,
6 honestly. I believe that would have been my last note,
7 though. I have the original with me. I don't know if
8 that would help.

9 Q That's okay unless it comes up later.

10 A Okay.

11 Q You know, you can hold on to your file. But
12 do you recall -- so, what was the basis for the
13 referral?

14 A So, it was -- the -- one of the questions that
15 they had was would it be possible for J.H. to go to a
16 smaller school setting while remaining within the
17 district. And again, the only way that that could
18 happen is if she was classified by this child study
19 team and eligible for an alternate setting. So this --
20 so the paperwork, I gather, you know, the different
21 forms from the doctors, from ICCPC, any other
22 information, together for the CST to review to
23 determine if, in fact, she would be, you know, eligible
24 to be reviewed for a CST eval.

25 Q So what happens to this form after you fill

1 it out?

2 A It was submitted to Camille Greco, who is the
3 CST's administrative assistant, and she marked it
4 "Received" on January 3rd, 2017.

5 Q And you said before that the parents
6 mentioned something about an out-of-district placement.

7 A Yes.

8 Q Can you talk a little bit more about what
9 they said about that?

10 A So, they had mentioned a few names that they had
11 been interested in. One school was a school that's
12 called Fusion Academy, which is a -- basically, it's a
13 -- from what I understand -- again, I spoke with a
14 person that represented Fusion Academy -- I believe
15 it's a one-on-one educational component where students
16 are -- and I don't know what their student population
17 is. From what it was described, there's kind of a
18 common area where students can -- like a study lounge
19 and then they go from room to -- kind of station-to-
20 station almost, where they receive a block of time with
21 one-on-one instruction from a teacher in that area and
22 that it's purely -- again, my impression of this is
23 that it's educational, 100 percent focused on
24 educational. I'm not aware of any therapeutic
25 component that goes along with that school -- again,

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1 that I'm aware of. So that was one of the -- one
2 program that they had thought about, again, in addition
3 to the mentioning of looking at American Christian as a
4 possible -- like, a smaller school setting as well.
5 Those were the ones that we had -- that I recall
6 speaking to, so -- yeah.

7 Q And at this time, had she been evaluated yet?

8 A No, she -- this was just -- this was just the
9 paperwork that's submitted -- needs to be submitted in
10 order to schedule the eligibility -- no, I'm sorry --
11 not eligibility meeting -- the nature and the scope.

12 Q And can you just turn to R-3, please, and
13 describe what this document is?

14 A This is a document that indicates the pre-referral
15 intervention. So, the District asks us to, prior to
16 doing -- to submitting a CST evaluation, what steps did
17 I take as the counselor to -- that didn't -- you know,
18 to help the student prior to, and for whatever reason,
19 did not work. And then, you know, since these pre-
20 intervention actions did not work, now we're moving on
21 to the next step of a formal evaluation process.

22 (R-3 Marked for
23 Identification)

24 Q And have you seen this before?

25 A Yes, I have.

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1 Q Did you complete anything on this form?

2 A I completed the form in entirety, yes.

3 MS. HOWLETT: Your Honor, we'd like to move R-

4 3.

5 THE COURT: Any objection?

6 MS. WARSHAW: No objection.

7 THE COURT: Thank you.

8 (R-3 Entered into
9 Evidence)

10 BY MS. HOWLETT:

11 Q Mr. Cusack, this form indicates that there's
12 a section that's entitled "Other Information You Feel
13 is Important to this Referral." Can you just read what
14 you wrote there? Did you write the response?

15 A I did.

16 Q And can you just read what you wrote?

17 A "J.H.'s parents explored private school settings
18 but have opted to keep J.H. at West Morris Central to
19 pursue the CST evaluation."

20 Q And when is this dated, this form?

21 A This would have been submitted with the initial
22 form, January 3rd, 2017.

23 Q And then can you just please turn to R-15?
24 It's marked "51" at the bottom.

25 A Sure.

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1 Q And just indicate for the Court what this is.

2 A This is an additional letter from ICCPC, signed by
3 Dr. Shorzan (phonetic), the program psychiatrist, and
4 Melissa Douglas, the senior clinician, and it indicates
5 it is basically the medical support for support for a
6 child study team evaluation, where they basically
7 document or summarize, I should say, the treatment that
8 they had provided up to this point, and then, using the
9 DSM -- I would imagine IV at this point in time, maybe
10 V -- they determined the actual diagnoses.

11 (R-15 Marked for
12 Identification)

13 Q So, have you seen this document before?

14 A Yes, I have.

15 Q And it's dated when?

16 A January 6th, 2017.

17 MS. HOWLETT: Your Honor, we'd like to move R-
18 15.

19 THE COURT: Any objection?

20 MS. WARSHAW: No objection.

21 (R-15 Entered into
22 Evidence)

23 BY MS. HOWLETT:

24 Q And to your recollection, was this document
25 provided with any sort of formal assessment report or

1 evaluation report?

2 A I don't recall receiving anything other than this
3 document.

4 Q And again, without, you know, reading it, but
5 just --

6 A Sure.

7 Q What was your impression or what was your
8 takeaway when you received this document?

9 A My takeaway was that I was very hopeful that the
10 child study team would evaluate her because this is
11 absolutely a child that was in need of some type of a
12 therapeutic assistance in addition to what she had
13 already received through ICCPC and the -- you know,
14 again, this is -- I won't read this to you, but, you
15 know, they discuss her -- that the anxiety that she's
16 feeling is preventing her from attending a regular high
17 school and, you know, that they are working with her on
18 her depression and anxiety. It says that she's
19 improved and works, you know, in smaller class group
20 settings. And the thing that -- the most significant
21 thing for me was when I -- with the line that says,
22 "She would greatly benefit from more time in a
23 therapeutic setting to continue progressing with her
24 anxiety and depression at school." And the Axis I
25 diagnosis was major depressive disorder, recurrent,

1 severe, without psychotic features and generalized
2 anxiety disorder as well.

3 Q So what would you have done with this letter
4 after you received it, if you recall?

5 A This was part of the referral packet.

6 Q And who do you give the referral packet to?

7 A Again, to the CST administrative assistant. And
8 then, the director of special services, who was Dr.
9 David Leigh at the time, would have assigned her to a
10 case manager to start the process, to build a team that
11 would assess her in different areas.

12 Q And then, what would be your involvement
13 after a CST referral?

14 A After that, I'm more of a participant in the
15 meetings. My role is basically -- I'm not going to say
16 done. I'm obviously there and attend the meetings and
17 offer input if asked, but this kind of turns it over to
18 the child study team.

19 Q And did you wind up attending any meetings --

20 A Yes, I did.

21 Q -- that involved the child study team?

22 A Yes.

23 Q Do you recall when those were?

24 A I cannot remember the exact date. I would have --
25 there should be a -- something indicating the nature

Cusack - Direct / Cross

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1 and scope meeting, which was what -- to determine what
2 assessments would be done if, A, we are going to
3 proceed with it, and if yes was the answer, and then
4 which -- you know, the social, the psychologicals --
5 what type of assessments would be done with J.H.

6 Q But you're not a member of the child study
7 team.

8 A I am not.

9 Q Did you attend an IEP meeting as well?

10 A I did.

11 MS. HOWLETT: Your Honor, I have no further
12 questions for this witness at this time.

13 THE COURT: Cross?

14 CROSS EXAMINATION BY MS. WARSHAW:

15 Q Hi, Mr. Cusack.

16 A Hello.

17 Q I'm going to refer you to --

18 MS. WARSHAW: May I approach the witness?

19 Okay.

20 BY MS. WARSHAW:

21 Q Mr. Cusack, I'm going to show you some
22 documents here. Can you turn to exhibit 16, please?

23 A Yes.

24 Q Okay. You had previously testified that you
25 had read this letter and that you were aware of its

1 context. Is that correct?

2 MS. HOWLETT: Your Honor, I believe this was
3 previously marked.

4 THE COURT: Yeah.

5 MS. HOWLETT: I don't know if we want to go
6 back and forth.

7 THE COURT: We don't. We don't want to do
8 that. If it's already -- well --

9 MS. WARSHAW: Okay. I can refer to her
10 numbers. That's fine.

11 THE COURT: I love when lawyers quote my pre-
12 hearing notes and I'm going to quote it back to you.
13 You're directed to do a joint exhibit list and
14 documents, if it's possible. This certainly seems like
15 one of those times when it would have been possible. I
16 don't want to use the same exhibit marked in a
17 different matter. This one's already in evidence.

18 MS. WARSHAW: Okay. Let me just find it.

19 BY MS. WARSHAW:

20 Q Okay, R-14. I'm going to refer you back to
21 R-14.

22 A This binder? The original binder?

23 Q The other binder, yes.

24 A Okay.

25 Q Isn't it true that some of the accommodations

1 listed -- that you had listed as something that the
2 school district came up with as accommodations for
3 J.H., isn't it true that they were included a few days
4 earlier in this letter from ICCPC?

5 A Yes, that actually was the primary source that I
6 used to generate the 504 plan. I went almost
7 exclusively on -- I trust them as the professionals
8 that have worked with her for two months, so I went
9 with -- with what they recommended.

10 Q Isn't it true that you received a letter from
11 my clients, dated January 4th, 2017, indicating that
12 they wanted J.H. evaluated for an IEP and for home
13 instruction?

14 A I believe I did -- I would have received a letter
15 indicating that they wanted a CST evaluation, yes. Is
16 there a reference to that document?

17 Q Isn't it true that you received a letter
18 dated -- I'm going to refer you to R-15.

19 A Sure.

20 Q Isn't it true that this letter also indicates
21 that J.H. needed a smaller class group setting for
22 school?

23 A Yes.

24 MS. WARSHAW: We have the same exhibit but it
25 hasn't been admitted yet into evidence, so --

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1 THE COURT: It's already in evidence.

2 MS. WARSHAW: I'm sorry?

3 THE COURT: It's already in evidence.

4 MS. WARSHAW: No, no, a different one. I'm
5 going to refer to a different one, R-17. You can do
6 (out of microphone range). That's fine.

7 THE COURT: I'm sorry. Thank you. I
8 misunderstood.

9 MS. WARSHAW: It's also -- okay.

10 BY MS. WARSHAW:

11 Q So I'm referring you to R-17. Have you ever
12 seen this document before?

13 A I have seen it just through the course of
14 preparing for this. This is not something that I would
15 have received as the guidance counselor.

16 Q Okay. But isn't it true that you testified
17 earlier that you received the other letters from ICCPC?

18 MS. HOWLETT: Your Honor, asked and answered.

19 THE COURT: I'll allow it. Go ahead.

20 THE WITNESS: Yes. This is the psychiatric
21 evaluation of March 15th, that you're -- if I'm on the
22 correct one -- 17?

23 MS. WARSHAW: Yes.

24 THE WITNESS: This would have been -- I would
25 not have -- I would not have submitted this document.

1 THE COURT: To the child study team?

2 THE WITNESS: To the child study team. This
3 was, I believe, the psychiatric evaluation that was
4 done by ICPC (sic).

5 BY MS. WARSHAW:

6 Q Okay. So just to be clear, are you saying
7 that you saw the other letters from ICCPC and submitted
8 them to the child study team, but after your referral,
9 you didn't see any of the letters from ICCPC?

10 A That's -- that's correct. This, in reference to
11 this specific document, I did not -- I have not seen
12 this until I was reviewing this binder. That's not
13 something that I would have been -- you know, in my --
14 this is something that would have been presented during
15 the -- I believe the eligibility meeting. That's a
16 psychiatric report.

17 Q Okay. But isn't it true that you attended
18 the April 6th, 2017 IEP meeting?

19 A Yes.

20 Q Okay. But you're not a member of the child
21 study team. Is that correct?

22 A I am not. That is correct.

23 Q So can you explain to the Court why you
24 actually attended the April 6th, 2017 IEP meeting?

25 A Because a guidance counselor is required by Code

1 to be present during all CST meetings for students.

2 Q Okay.

3 A To my knowledge, that's the -- yes.

4 Q This report -- this report is dated March
5 15th, 2017. Is that correct?

6 A Yes.

7 Q Okay. So, at the April 6th, 2017 IEP meeting,
8 this report was discussed. Is that correct?

9 A Yes, this report was discussed -- was presented,
10 yes.

11 Q Okay. So are you aware that Dr. Shinivasin
12 (phonetic) recommended --

13 MS. HOWLETT: Your Honor, this document is,
14 number one, not in evidence, and number two, this
15 witness has testified he's not a member of the child
16 study team and not qualified to view this document.

17 THE COURT: I mean, the document, if it's
18 going to -- if you're going to ask him a question about
19 what does it say that the doctor recommended -- I'm
20 assuming it's going to go into evidence at some point
21 in time, most likely without an objection, and it
22 speaks for itself or the doctor is going to testify. I
23 mean --

24 MS. WARSHAW: He attended the meeting in which
25 it was discussed, so I'm asking him his knowledge.

1 THE COURT: Again, you asked him what she
2 recommended. Ask him what he knows about what happened
3 at the meeting.

4 MS. WARSHAW: I asked -- okay.

5 BY MS. WARSHAW:

6 Q Mr. Cusack, are you aware that this report,
7 dated March 15, 2017, by Dr. Shinivasin, recommended
8 that J.H. attend an out-of-district placement?

9 A I -- during that meeting, they -- there was -- I
10 do not recall. This was a meeting that occurred over a
11 year ago, so I do not recall. I did not have access --
12 I did not review this document for the context of that
13 meeting and I don't recall the exact word verbiage of a
14 meeting that happened over a year ago.

15 Q At the April 6th, 2017 IEP meeting, isn't it
16 true that you witnessed the interim school's
17 psychologist, Sherrie Wilke, tell J.H. at that meeting,
18 when the behavioral support program was discussed and
19 J.H. started to become upset, that it is not how adults
20 act and that J.H. should have an open mind?

21 A Those -- I can't recall if those were her exact
22 words, but I do recall her saying something to that
23 effect.

24 Q Isn't it true that you had several
25 discussions with my clients regarding J.H.?

1 A Oh, yes.

2 Q Isn't it true that you discussed with my
3 clients private schools for J.H.?

4 A Yes, they discussed -- and again, under the
5 context of whether they were going to withdraw her from
6 West Morris and enroll in a private school or through
7 the context of a CST evaluation, if an out-of-district
8 placement -- there are many different private schools
9 that are therapeutic or such -- if that was going to be
10 what would -- ultimately, an option, and that would
11 have been, you know, depending on the outcome of the
12 child study team's findings.

13 Q Isn't it true that you informed my clients
14 that despite the recommendation by Dr. Shinivasin for
15 an out-of-district placement for J.H., the District was
16 going to offer the behavioral support program as their
17 first suggestion for J.H.?

18 A When a student is brought to -- you know, when
19 there are different options for a student, we always
20 look for the least restrictive environment first, and
21 we wanted to try that as an option because it is -- the
22 behavioral support -- I'm sorry -- the Being Successful
23 program is a small school, as was -- you know, it's
24 kind of a small school within a school that was -- as
25 was recommended, as you're indicating by a small school

1 type. There are -- again, I can't speak to the numbers
2 in that room, but to my knowledge, that is a small
3 school -- a small setting that is based out of West
4 Morris Mendham High School, our sister school.

5 Q Isn't it true that J.H. never had any
6 disciplinary issues to your knowledge?

7 A None. Not that I'm aware of, no.

8 Q And isn't it true that the BSP program is
9 actually called the Behavioral Support Program?

10 A There are two programs. The one that's housed out
11 of West Morris Central, which is her home building, is
12 called the Behavioral Support Program. It is also
13 referred to -- there is another program at West Morris
14 Mendham called Being Successful Program, which
15 unfortunately, use the same letters.

16 Q When did the Being Successful Program
17 actually come into existence?

18 A I'm not aware of that. I do not work in that
19 building, so I'm not -- again, that's -- the behavioral
20 -- the Being Successful Program at Mendham, I can't
21 speak to when it became. I do not know when it became
22 in existence.

23 THE COURT: Can you stop for a second, please,
24 because I want to make sure I've got it right. The
25 Being Successful Program -- what was the other -- the

1 other BSP program?

2 THE WITNESS: So, at West Morris Central,
3 which is J.H.'s home building, it's called the
4 "Behavioral Support Program," and that's a small group
5 within our building. It has maybe seven -- six
6 students in each class for the core subject areas.

7 At Mendham, they have a program called Being
8 Successful Program, which is also kind of a school
9 within a school. That's -- their acronym is the Being
10 Successful Program.

11 THE COURT: Okay.

12 THE WITNESS: I believe that's -- I got it
13 right.

14 THE COURT: I'm sorry to interrupt. Go ahead.

15 BY MS. WARSHAW:

16 Q I'm going to refer you to P-31. That would
17 be in the blue binder.

18 A I'm sorry -- P-31?

19 Q P-31. After the brochure, turn to the --
20 this page, which is in color, which is a copy of the
21 school district website.

22 A Yes.

23 Q Okay? Can you tell me -- can you verify that
24 this is the school district official website?

25 A This is the official website for West Morris

1 Mendham High School.

2 (P-31 Marked for
3 Identification)

4 Q West Morris Mendham.

5 A Mendham, yes.

6 Q Okay.

7 A I am based out of West Morris Central.

8 Q Okay. So, can you read what it says under
9 "Program of Studies?" There are four bolded categories
10 there. Can you read what the second one is?

11 A Sure. "Behavioral Support Program."

12 Q And that's West Morris Mendham High School.

13 A That is correct.

14 Q Right. That's the high school that you just
15 indicated had the Being Successful Program. Is that
16 correct?

17 A Yes.

18 Q Okay. But it's actually called the
19 Behavioral Support Program, isn't that correct,
20 according to the website?

21 A The -- so, I don't -- I have never seen this
22 website before. I don't know if this is -- this says,
23 "alternate student programs," just reading through
24 here. I'm sorry, this is -- I just saw the Mendham
25 High School logo. This is the Regional High School

1 District's website. There are three websites -- West
2 Morris Central, West Morris Mendham, and West Morris
3 Regional High School District. This is the West Morris
4 Regional High School District's page. So, I'm sorry.
5 I did not -- the "Mendham" through me off.

6 Q Mr. Cusack, isn't West Morris Regional High
7 School District -- doesn't that include West Morris
8 Central High School and Mendham High School?

9 A Yes, it does.

10 Q Yes, it does. And it does say on this
11 website "Mendham High." Is that correct?

12 A That does say on this page "Mendham High,"
13 correct.

14 Q Okay. So it includes Mendham High School?

15 A Yes.

16 Q Okay. So now turn to the next page.

17 THE COURT: Just to be clear, what it says on
18 there, "Mendham High," it appears to be a photograph of
19 the front of the school.

20 THE WITNESS: Yes.

21 MS. WARSHAW: Correct.

22 THE COURT: Okay. Go ahead.

23 BY MS. WARSHAW:

24 Q So I'm going to refer you to the next page,
25 which says, "Search Results."

1 A Yes, okay.

2 MS. HOWLETT: Your Honor, we should
3 authenticate it.

4 THE COURT: Yeah, let's stop for a second.
5 I'm confused. We marked as P-31, the Being Successful
6 Program Brochure. In that, is attached a copy of, I
7 guess, a page -- a shot of, I guess, the front -- the
8 first page of the District's website. It then has a
9 search result. And this is all one document, and how
10 so?

11 MS. WARSHAW: This is one document.

12 THE COURT: Is this part of -- I'm not sure
13 how it's one document. It seems to be several
14 documents.

15 MS. WARSHAW: Well, Your Honor --

16 THE COURT: And I'm not that smart. This
17 confuses me.

18 MS. WARSHAW: Your Honor, this is -- part of
19 the issue that we had raised earlier was that we had
20 requested information regarding the Being Successful
21 Program versus the Behavioral Support Program.

22 THE COURT: I understand that.

23 MS. WARSHAW: And we never received that, so
24 this is -- this is the actual school district website,
25 copies of this, which talk about the Behavior Support

1 Program at the Mendham High School. There is no --
2 when you do a search, which I show the search, nothing
3 comes up for the Being Successful Program. It only
4 comes up for the Behavioral Support Program, which --

5 MS. HOWLETT: Your Honor, I'm not sure, number
6 one, what this is probative about, and number two, this
7 appears to be a document that was created by counsel,
8 so it can't be authenticated by the witness.

9 MS. WARSHAW: I'm asking him if this is true.
10 That's all. And if he -- if he's aware of this.

11 MS. HOWLETT: This is --

12 MS. WARSHAW: I'm not asking him if he created
13 the document.

14 THE COURT: One at a time. One at a time.

15 MS. HOWLETT: Sorry, Your Honor. I apologize.

16 THE COURT: I'm not that smart.

17 MS. WARSHAW: I'm not asking if he created the
18 document. I'm asking him if he's seen this before and
19 if he's aware of this, because he just testified that
20 at one high school, it's called the Behavioral Support
21 Program, and another, it's called the Being Successful
22 Program. But unfortunately, the school district
23 website has nothing regarding the Being Successful
24 Program. It only has information about the Behavioral
25 Support Program.

Cusack - Cross

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1 THE COURT: Now you're testifying.

2 MS. HOWLETT: Your Honor --

3 MS. WARSHAW: No, I'm just telling you what it

4 says. I'm just asking --

5 MS. HOWLETT: Your Honor, what's available on

6 the website is --

7 THE COURT: Yeah, I'm --

8 MS. HOWLETT: -- it is irrelevant.

9 THE COURT: Yeah, I don't know where we're

10 going with this, but --

11 MS. WARSHAW: Well, then I'm going to ask the

12 Court to take judicial notice of the website and what

13 it says.

14 MS. HOWLETT: We'll object to that, Your

15 Honor.

16 THE COURT: Yeah, and I'm not going to do that

17 anyway.

18 Are you responsible for maintaining the

19 website?

20 THE WITNESS: No, I am not.

21 THE COURT: You wouldn't happen to know who is

22 responsible for maintaining the website?

23 THE WITNESS: From a district standpoint, I do

24 not, no.

25 THE COURT: (Out of microphone range) and

1 you're familiar with the two programs, though?

2 THE WITNESS: I am only familiar with the
3 program that's at West Morris Central High School, the
4 BSP program that is --

5 THE COURT: Don't use "BSP" because --

6 THE WITNESS: Okay, I'm sorry. The Behavioral
7 Support Program, yes.

8 THE COURT: That's the only one you're --

9 THE WITNESS: That's the one that I'm -- I
10 have a couple of students in it currently right now. I
11 do not have any former students that are enrolled in
12 the program at Mendham.

13 THE COURT: I'm going to let you ask him
14 questions about what he knows and not have him
15 speculate as to why the website has what it has on it,
16 because it doesn't help me. And quite frankly, I don't
17 think it helps you either.

18 BY MS. WARSHAW:

19 Q Mr. Cusack, are you aware that Dr. David
20 Leigh, the former director of special services, started
21 the Behavioral Support Program at the Mendham High
22 School?

23 A I was not aware of that, no. I'm not familiar
24 with who started that program.

25 Q You testified that J.H. was an advanced level

1 student. Is that correct?

2 A Yes.

3 Q Were you aware that the Behavioral Support

4 Program offered classes in the studies level?

5 A I'm aware that they do offer classes at various

6 levels and they tailor it to meet the needs of the

7 individual student in the program.

8 Q Are you aware that the school district,

9 Regional High School district website does say that all

10 special education curricula addressed the New Jersey

11 Core Curriculum Content Standards, and for purposes of

12 GPA and rank, are considered studies level for the

13 Behavioral Support Program?

14 MS. HOWLETT: Your Honor, we're back to what

15 the website says.

16 MS. WARSHAW: Well, I'm just asking if he's

17 aware of it.

18 THE COURT: Yeah, she can ask that.

19 MS. HOWLETT: Okay. I'm sorry, Your Honor.

20 THE WITNESS: Can you repeat the question,

21 please?

22 BY MS. WARSHAW:

23 Q Are you aware that the West Morris Regional

24 High School District website indicates that all special

25 ed curriculum address the New Jersey Core Curriculum

1 Content Standards, and for purposes of GPA and rank,
2 are considered studies level in the Behavioral Support
3 Program?

4 A I am not aware that the website indicates that,
5 no.

6 Q Okay. Are you aware that the Behavioral
7 Support Program at the Mendham High School offers study
8 level curriculum?

9 A I am not aware of that.

10 MS. HOWLETT: Your Honor, the witness has
11 already testified that the program at Mendham High
12 School is not referred to as the Behavioral Support
13 Program; it's referred to as the Being Successful
14 Program. I object to the question.

15 THE COURT: Answer the -- I'm going to let him
16 answer the question.

17 Answer the question.

18 THE WITNESS: I'm sorry. Could you please
19 repeat the question?

20 BY MS. WARSHAW:

21 Q Are you aware that the Behavioral Support
22 Program at the Mendham High School offers studies level
23 curriculum?

24 A I'll be honest. I am not aware of any details of
25 the Behavioral Support Program at Mendham High School -

1 - of the Being Successful Program at the -- at Mendham
2 High School. I'm -- that's -- I don't have any
3 students that are in the program currently. I haven't
4 had any students that are in the program. The program
5 that is based out of our school -- if a student is
6 transferred to the Being Successful Program at Mendham,
7 they would be brought in as a new, and most likely,
8 have a new guidance counselor that, you know,
9 specializes in that specific program. I have students
10 that are in the Behavioral Support Program at Central
11 and I work with those students in that building -- in
12 this building. But I will admit that I do not have any
13 real knowledge, working knowledge, of the Being
14 Successful Program at Mendham High School.

15 Q You testified earlier, isn't it true that the
16 studies level curriculum is different from the advanced
17 level?

18 A Every level is -- yes, there are -- there are
19 varying levels within our district, yes.

20 Q Is it fair to say that the studies level is a
21 lower level curriculum than the advanced level
22 curriculum?

23 A It is. It's mainstreamed, however, it is a --
24 studies level is lower level -- a lower level course.

25 Q And isn't it true that the Behavioral Support

1 Program is a self-contained program for students?

2 A Which program are you referring to -- the Mendham
3 program?

4 Q The Mendham High School.

5 A To my knowledge, that is one thing that I do know,
6 that, from what I understand -- from what I understand,
7 again --

8 THE COURT: The Being Successful -- we're back
9 at Mendham.

10 MS. WARSHAW: Your Honor --

11 MS. HOWLETT: Your Honor --

12 MS. WARSHAW: Your Honor, again, I'm going to
13 object because I --

14 THE COURT: You're going to object to what I'm
15 saying?

16 MS. WARSHAW: No, I'm going to object to
17 anything being referred to as the Being Successful
18 Program because I requested -- numerous times, I
19 requested documents on that, to show that it existed.

20 THE COURT: And I already ruled on that,
21 didn't I? So I'm going to allow him to testify. You
22 asked him -- my problem is you asked him a question
23 about the Behavioral Support Program at Mendham. I
24 think, at Mendham, it's the Being Successful Program.

25 THE WITNESS: Yes.

1 THE COURT: So, I just don't want to confuse
2 the record, that we're asking about this BSP thing.
3 It's a little confusing. But you asked him a question
4 about Behavior Support Program, which he's testified
5 he's familiar with, but you said "at Mendham," and from
6 what I've gotten so far from his testimony, that the
7 BSP program at Mendham is the Being Successful Program,
8 which he is not familiar with. So, I don't know. You
9 may have just mixed schools when you asked the
10 question, but you did ask -- I wrote "Behavioral
11 Support Program," and then I stopped because you said,
12 "at Mendham," and that's when I opened my mouth to find
13 out where you were going.

14 BY MS. WARSHAW:

15 Q I'm going to refer you to P-26.

16 THE COURT: I take it you're withdrawing that
17 question?

18 MS. WARSHAW: I'm sorry, Your Honor?

19 THE COURT: You're withdrawing that question,
20 that I asked which program you're referring to? You
21 were asking a question about one of the BSP programs,
22 but you said "Behavioral Support Program," and then you
23 said "at Mendham," and that's when I stopped you.

24 MS. WARSHAW: I'm going to follow up with a
25 different question.

1 THE COURT: Thank you.

2 BY MS. WARSHAW:

3 Q Have you ever seen this document before?

4 A I assume we're looking at the copy of J.H.'s IEP -
5 - draft -- that says "draft" on the bottom?

6 (P-26 Marked for
7 Identification)

8 THE COURT: I didn't get the number. I'm
9 sorry.

10 MS. WARSHAW: Oh, P-26.

11 THE COURT: Thank you.

12 BY MS. WARSHAW:

13 Q I'm going to refer you to what's listed on
14 the bottom page as "13/22." It's entitled "Special
15 Education Determination."

16 A Thirteen slash 22?

17 Q Correct.

18 A Am I in -- am I in the correct binder? I just
19 want to -- because I'm seeing 8/20, 9/20, 10/20, 13/20.

20 Q No, you're too far. Go to the first IEP.
21 This is 13/22.

22 MS. HOWLETT: I'm not sure where we are
23 either. I don't see a 13/22.

24 THE WITNESS: I don't see a -- again, if I'm
25 in the wrong -- I might be in -- I'm in their binder.

1 THE COURT: Yeah, Ms. Warshaw, I just went
2 through every page. The lower right hand corner,
3 correct?

4 MS. WARSHAW: Yup.

5 THE COURT: No 13/22.

6 MS. WARSHAW: Is it 13/20? Yes. Okay. You
7 know what? There's -- the way it printed, some say
8 "13/22"; the others say "13/20." So if you have 13/20,
9 it's the same document.

10 THE WITNESS: Okay, yes.

11 BY MS. WARSHAW:

12 Q Okay. On the top left hand side, there's a
13 sentence that says, "At this time." Do you see that?

14 A Yes.

15 Q Okay. Can you read that sentence for me,
16 please?

17 A "At this time, J.H. is receiving home
18 instruction." The entire --

19 Q Read that whole paragraph.

20 A The whole paragraph? Okay. "It is recommended
21 that J.H. continue with home instruction in the morning
22 and begin attending West Morris Mendham High School's
23 Behavioral Support Program in the afternoon. J.H. will
24 have a shortened day, from 11:30 to 2:35."

25 Q So am I correct when it says that West Morris

1 Mendham High School has a Behavior Support Program?

2 A I believe --

3 Q Is that what it says?

4 A That is what is typed in this page.

5 MS. HOWLETT: Your Honor, we --

6 BY MS. WARSHAW:

7 Q We're going to go to page --

8 THE COURT: Wait, wait, wait. I'm sorry. Go
9 ahead.

10 MS. HOWLETT: Have we moved this document in?

11 THE COURT: We didn't move it yet.

12 MS. WARSHAW: No, we're going to move it
13 afterwards.

14 THE COURT: She can ask questions without
15 moving it.

16 MS. HOWLETT: That's fine.

17 THE COURT: Okay.

18 MS. HOWLETT: I was just catching up (out of
19 microphone range.)

20 BY MS. WARSHAW:

21 Q We're going to -- I'm going to refer you to
22 page 16 of 20.

23 A Okay.

24 Q On the bottom third of the page, it says,
25 "Additional Special Education Program Information." Is

1 that correct?

2 A Sixteen slash twenty?

3 THE COURT: Sixteen twenty in my binder says,
4 "Notice Requirements for the IEP (out of microphone
5 range)"

6 MS. WARSHAW: Fifteen twenty.

7 BY MS. WARSHAW:

8 Q It says, "Additional Special Education
9 Program Information" about two-thirds the way down on
10 the page. Is that correct?

11 A Yes.

12 Q Okay. Can you read that paragraph, please?

13 A "It is proposed that J.H. will continue to receive
14 home instruction with a gradual return to a less
15 restrictive setting at Mendham High School within the
16 Behavioral Support Program. J.H. will be expected to
17 attend afternoons only for the remainder of the 2016/17
18 school year. Transportation will be provided to bring
19 J.H. to Mendham High School. It is anticipated that
20 J.H. will attend a full-day program for the 2017/18
21 school year."

22 Q So, again, according to the IEP that was
23 presented to my clients at the April 6th, 2017 IEP
24 meeting which you testified that you attended, is it
25 correct that this IEP refers to the Behavioral Support

1 Program at the Mendham High School?

2 A "Behavioral Support Program" is what is typed in
3 this report.

4 Q Thank you. And I'm going to refer you to the
5 first page of the -- let's see -- I'm sorry. I'm going
6 to refer you to the second page of the IEP. Are you
7 listed as the guidance counselor on that IEP
8 participants meeting?

9 A Yes, I am.

10 MS. WARSHAW: Okay. Your Honor, I'd like to
11 move this document into evidence.

12 MS. HOWLETT: Your Honor, no objection.

13 THE COURT: Okay.

14 (P-26 Entered into
15 Evidence)

16 BY MS. WARSHAW:

17 Q Isn't it true, Mr. Cusack, that at the April
18 6th, 2017 IEP meeting, you pulled April Osteo Banda into
19 the meeting, as she was a former teacher at the Mendham
20 High School Behavioral Support Program, and currently,
21 the district instructional technology specialist, and
22 you informed -- and she informed you and my clients as
23 to the behavioral point system and the behavioral
24 aspects of that program?

25 A Again, I know -- I have a very limited knowledge

1 of the program, and having know that Ms. Banda was
2 formerly in that program, I saw it as an opportunity to
3 inform and that's why I asked -- she was asked to come
4 in and explain what the program was about to J.H. and
5 her parents.

6 Q And isn't it true she explained to you and my
7 clients that there was a point system, so if students
8 showed up at school, they would receive points?

9 A Again, I cannot recall the exact -- exactly what
10 was discussed, you know, by her. I can't.

11 Q And do you know who Tracy Costa is?

12 A I'm aware of where -- Tracy Costa, I believe, is
13 the current person who handles the Being Successful
14 Program at Mendham. To my knowledge, that's --

15 Q I'm going to refer you to R-2. Do you have a
16 copy of the original documents, because it's cut off on
17 the bottom.

18 A I'm sorry -- R-2.

19 THE COURT: That's the --

20 THE WITNESS: Which document -- which binder?

21 Are we in your binder or back to --

22 MS. WARSHAW: No, I'm sorry. Yeah, the other
23 binder.

24 MS. HOWLETT: The black binder.

25 THE WITNESS: Okay.

1 THE COURT: The black one is the R and the
2 blue one is the P binder.

3 THE WITNESS: Gotcha. All right.

4 THE COURT: He's already testified he has the
5 original.

6 THE WITNESS: Yes, I do have the original.

7 BY MS. WARSHAW:

8 Q Do you recall what is on the original, what
9 it says on the last line or so?

10 THE COURT: How about we ask him to actually
11 read it from the original, as opposed to having him
12 recall.

13 MS. HOWLETT: Your Honor, we'd be more than
14 happy to produce the original. I apologize for the
15 copy.

16 THE COURT: I'm going to do it when we break.
17 I'm going to get a copy made for everybody.

18 MS. HOWLETT: Thank you.

19 MS. WARSHAW: Okay. Thank you.

20 THE COURT: Read it out loud. What does it
21 say?

22 THE WITNESS: Oh, I'm sorry. I thought -- I
23 thought -- read everything that's listed except what we
24 can't, obviously, read. Okay.

25 THE COURT: Yeah, read what we can't read.

Cusack - Cross

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1 THE WITNESS: Oh, I don't have the -- I don't
2 have the original in front of me.

3 MS. WARSHAW: Okay.

4 THE COURT: Oh, I thought you --

5 THE WITNESS: I'm sorry. I have --

6 MS. HOWLETT: The witness was instructed to
7 leave his belongings in another room, so --

8 THE COURT: Got it. So it's available and in
9 the building today.

10 THE WITNESS: Yes.

11 MS. HOWLETT: Correct.

12 THE COURT: All right. We'll take care of
13 that later.

14 MS. WARSHAW: Okay. Thank you.

15 BY MS. WARSHAW:

16 Q Mr. Cusack, you had testified that you
17 drafted this document yourself, correct?

18 A That's correct.

19 Q Okay. My clients never signed it or
20 anything, but you -- you drafted this yourself.

21 A No, the acknowledgment, I guess, would be the best
22 word to use, of -- from the parents would be the note
23 that you referenced earlier from -- I believe it was
24 January 6th, that indicated they requested the CST
25 evaluation to move forward.

1 Q Okay.

2 A I might be wrong on the exact date, however, but
3 you did reference something earlier to that effect.

4 Q Were you aware that J.H. was never
5 hospitalized?

6 A That is -- I believe -- I believed that when I
7 wrote this, this letter was -- this document -- yes, I
8 am aware of that. I've been told now that she was not
9 hospitalized and I -- I guess I mis-documented that.
10 That was an error on my part. I just -- having
11 generated this form in January, having -- she was in
12 the partial program, you know, for several -- two
13 months -- and I just used -- it was a poor choice of
14 words to use. I should have said "in a therapeutic
15 setting," as opposed to "hospitalized."

16 Q Okay. Are you aware that it was a partial
17 day program?

18 A Yes. A partial day program, yes, absolutely.

19 Q You also indicated that she refused to return
20 to school the third day. Isn't it true that, due to
21 her anxiety, she was unable to return to school --

22 MS. HOWLETT: Your Honor, he can't --

23 BY MS. WARSHAW:

24 Q -- as opposed to refusal?

25 THE COURT: Sustained. How is -- how is he

1 going to know that?

2 MS. WARSHAW: Well, I'm asking the
3 characteristic of what --

4 THE COURT: You're asking him to put his head
5 -- to know what she thought. That's what you're asked
6 him to do.

7 MS. WARSHAW: No. Okay. I will rephrase it.

8 BY MS. WARSHAW:

9 Q Mr. Cusack, how did you determine that J.H.
10 refused to return to school?

11 A Well, I received an e-mail from Mrs. -- from
12 J.H.'s mother, indicating that she was -- that she was
13 not coming into school. I believe that was on the 10th.
14 Somewhere in here is a copy of that e-mail. I don't
15 know which one that is referenced.

16 Q So, when you wrote "she refused to return to
17 school," that was your word, not --

18 A That was my word.

19 Q -- my clients' word?

20 A Yes, those were my words, yes.

21 Q Okay. And is it your understanding that,
22 based on what my client indicated to you, that J.H. was
23 unable to come to school due to her anxiety?

24 A Again, it's possibly a poor choice of words that I
25 used in it, but, I mean, she was not present. She was

1 not in school after that date due to her medical
2 issues, yes.

3 Q I'm going to refer you in the black binder to
4 R-24.

5 A Okay.

6 Q Have you ever seen this document before?

7 A Yes.

8 Q Okay. And can you -- I know that you went
9 through a little bit of this before, but can you verify
10 what grade level this was?

11 A This was grade seven. The document earlier was
12 grade eight.

13 Q Okay. And so, this was for which student?

14 A J.H.

15 (R-24 Marked for
16 Identification)

17 Q Okay. And can you briefly describe what her
18 grades were in these classes?

19 A She received for the -- well, this is not a final
20 -- I'm sorry -- yes, so a combination of A minus, A's,
21 and B's, an A plus, again, in band. That's very strong
22 grades.

23 Q Mostly A's, is that correct?

24 A Yes, mostly A's, absolutely.

25 Q Okay.

Cusack - Cross

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1 MS. WARSHAW: So then, Your Honor, I'd like to
2 move this into evidence even though -- I'm not sure it
3 was already put into evidence -- 24.

4 THE COURT: This was not in.

5 MS. WARSHAW: Okay.

6 MS. HOWLETT: It was not.

7 MS. WARSHAW: Okay. So I'd like to move this
8 into evidence.

9 MS. HOWLETT: Yes, Your Honor.

10 (R-24 Entered into
11 Evidence)

12 BY MS. WARSHAW:

13 Q Mr. Cusack, can you turn to R-25, the next
14 page?

15 A Sure.

16 Q And comparing her grades from R-24 for
17 language arts versus R-25 for language arts, can you
18 tell me what those grades are?

19 A The grades are -- there's B grades, there's a bit
20 of a dip. So, she had some B's and C pluses and C's.

21 THE COURT: Wait a minute. I'm -- we just did
22 R-14, yes?

23 MS. WARSHAW: And then R-25.

24 THE COURT: R-24 I have as an invitation to a
25 meeting to determine special ed eligibility.

Cusack - Cross

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1 MS. WARSHAW: Oh, I'm sorry. That's
2 respondents.

3 THE COURT: That's what I have.

4 MS. HOWLETT: R-24, Your Honor?

5 THE COURT: My R-24, I just flipped it and it
6 says, "Invitation to a Meeting to Determine." That's -
7 -

8 MS. WARSHAW: I think that's P-24.

9 MS. HOWLETT: Are you in blue?

10 THE COURT: Black -- oh, I'm embarrassed.

11 MS. HOWLETT: I'm about to fire a paralegal
12 over that.

13 THE COURT: No, no. My apologies. Okay, go.

14 MS. WARSHAW: Okay.

15 BY MS. WARSHAW:

16 Q So, Mr. Cusack, can you look at R-24 and 25
17 and compare her grades for language arts from seventh
18 grade to eighth grade?

19 A So, in seventh grade, she had, in order from
20 marking period one through four, A, A minus, A minus,
21 A. In marking period one through four on the grade
22 eight, she had a B, B minus, C, C minus, and a final
23 grade of C plus.

24 Q As her guidance counselor, would this have --
25 these grades and the dip in the grades -- I'm sorry --

1 as a guidance counselor -- you weren't her guidance
2 counselor at the time -- would this have been
3 significant for somebody to notice that there was a
4 change in the grades so drastically?

5 A I wasn't something honestly that would really
6 raise a red flag. I mean, if she were, you know,
7 failing and getting D's and F's, then I would say
8 absolutely, there's something going on here. But, you
9 know, to go from -- again, an A minus, I believe was
10 the -- to a C plus -- I mean, it was -- I don't know
11 why, for some reason the final grade is not here, but
12 just looking at the numbers, she probably would have
13 had an A minus for the year for the grade eight. Yes,
14 there is noticeable decline.

15 Q Were you aware when you became her guidance
16 counselor and reviewed her eighth grade transcript that
17 she was having issues with the language arts' teacher?

18 A I was not aware of that, no. I don't recall. I
19 mean, there's -- I don't recall an issue with the
20 language arts teacher being brought to my attention.
21 Perhaps it was mentioned in the meeting, but that would
22 have been in spring of 2015, so I can't really speak to
23 that.

24 Q I'm showing you, also, R-24 and 25 with
25 regard to Spanish.

1 A Okay.

2 Q She went from an A plus to a B. Would that
3 have raised a concern for anybody?

4 A Nothing really. No, not --

5 Q Were you aware that she was having some
6 issues with the teacher harassing her in Spanish in
7 eighth grade?

8 A I was not aware of that.

9 Q Is that something that a guidance counselor
10 would be aware of?

11 A If it was brought to my attention, yes.

12 MS. HOWLETT: Your Honor, the witness was not
13 --

14 THE WITNESS: I was not the guidance counselor
15 then.

16 MS. HOWLETT: The student wasn't even enrolled
17 in our district during this time period.

18 MS. WARSHAW: Your Honor, he testified --

19 THE COURT: It doesn't matter. He said he's
20 not aware, so --

21 MS. WARSHAW: All right. But he also
22 testified that he reviewed these when she came into the
23 district, so --

24 MS. HOWLETT: But whether a teacher harassed
25 her while she was in eighth grade --

Cusack - Cross

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1 THE COURT: Look, when she's talking, you're
2 not.

3 MS. HOWLETT: I'm sorry, Your Honor.

4 THE COURT: All right? And when you're
5 talking, she's not. And when I'm talking, you're both
6 quiet, all right? I don't like interruptions. Let her
7 finish her statement and if you want to make an
8 objection or have something to say, I will let you say
9 it.

10 MS. HOWLETT: Thank you, Your Honor. I
11 apologize.

12 THE COURT: Go ahead, Ms. Warshaw.

13 MS. WARSHAW: Thank you.

14 THE COURT: But he answered that he was not
15 aware that there was an issue with the Spanish teacher.

16 MS. WARSHAW: Okay. That's fine.

17 BY MS. WARSHAW:

18 Q Mr. Cusack, you had indicated that you had
19 reviewed J.H.'s NJ ASK results from sixth, seventh, and
20 eighth grade. Is that accurate?

21 A Yes, that's correct.

22 Q Okay. And I'm going to refer you to R-37,
23 which I believe already in evidence. You had indicated
24 when she took the NJ ASK, her grades were in the upper
25 levels for math. Is that fair?

1 A Yes, that is correct.

2 Q Okay.

3 A She was in the -- she was in "met expectations"
4 and "highly" -- there are a lot of forms. I would have
5 to go back through each one, but she was either "met"
6 or "exceeded expectations" in those areas, correct.

7 Q Okay. So, I'm showing you what's been marked
8 R-37. Isn't it true that, in math, she was only at the
9 level three, which was "approaching expectations?"

10 A That is correct.

11 Q Okay. So, would that have raised any concern
12 for you or any of her teachers regarding her
13 performance?

14 A No. First, these results are -- we would not have
15 received these. These results get sent to the Long
16 Valley Middle School from the State after they're
17 graded. But then, they are sent along with, at a later
18 date, to our school, because we're not the same
19 district. I wouldn't have received these, most likely,
20 until -- again, I can't say, but it's possible I didn't
21 even receive these results until the school year
22 started.

23 Q Ninth grade --

24 A Yes.

25 Q -- you're talking about.

1 A Yes.

2 Q This was in ninth grade -- R-37.

3 A Oh, I'm sorry. I'm sorry. I thought -- I'm
4 sorry. I'm thinking -- so, we would have received
5 these over the summer of going into sophomore year is
6 when we would have received those, yes.

7 Q Okay. Did you ever compare her grades for
8 sixth, seventh, and eighth on the NJ ASK to her grades
9 on the PARCC test in ninth grade?

10 A You can see the comparison, but I never did look
11 at those. They are entirely different assessments.
12 One is pencil and paper based; one is computer based.
13 They're entirely different assessments. So, I mean,
14 again, if she had dropped into a level, you know, level
15 two, I would have brought that to the attention --

16 Q At any time during ninth grade, did you
17 contact my clients or anyone about J.H.'s absences?

18 A Not to my recollection, no.

19 Q What about in tenth grade, September through
20 October, the beginning of October of tenth grade, did
21 you ever notice or contact anyone regarding J.H.'s
22 excessive absences?

23 A J.H.'s mother notified me in late September, so I
24 was aware. She called me and told me.

25 Q In ninth grade, were you aware of the reasons

1 why J.H. was absent from school?

2 A The only thing I could see on there, other than
3 the occasional absence, you know, was a -- towards the
4 very end of the year, several medical, and again, I
5 can't recall why she was absent. I don't know the --
6 if I was -- I can't recall the details of why she was
7 absent. I don't have the medical notes that were
8 submitted that would indicate why.

9 Q So were you aware in December of 2016 -- in
10 December of 2016, were you aware that J.H. was
11 experiencing anxiety just trying to walk through the
12 door of the high school?

13 A Again, so this is her freshman -- sophomore year?

14 Q Sophomore year.

15 A Sophomore year. Yes, I mean, that was part of --
16 so, in her sophomore year, in December, yes, that was
17 the whole reason why she was at ICCPC, was to deal --
18 dealing with her anxiety issues, absolutely. I mean,
19 the goal -- so, yeah.

20 Q I'm going to refer you to R-1 in the black
21 binder. Is it correct that this 504 plan was in effect
22 for 2016/2017 school year?

23 A The -- from the December 7th date on, yes.

24 Q Okay. But through the end of June 2017 -- is
25 that correct?

1 A Yes, that is correct.

2 Q Okay. And isn't it true that 504 plans are
3 meant to be in effect for one year only? Isn't that
4 correct?

5 A They're reviewed -- they're a one year --
6 typically, a one year document and they're reviewed at
7 the conclusion of that and new documentation is
8 requested to determine if it will be continued or
9 discontinued.

10 Q Were you aware that when J.H. was put on home
11 instruction from December of 2016 through June of 2017
12 that she attended ICCPC at least three days a week from
13 4 to 7 p.m.?

14 A I believe that's indicated, yes. I mean, that
15 would be a typical progression that I would expect to
16 see, yes.

17 MS. WARSHAW: Your Honor, I need one moment,
18 please.

19 THE COURT: Sure.

20 BY MS. WARSHAW:

21 Q Mr. Cusack, at the April 6th, 2017 IEP
22 meeting, you didn't differentiate the difference
23 between the behavioral support program at West Morris
24 Central versus the behavioral support program at
25 Mendham High School, just that J.H. had difficulty

1 walking through the door of the school at West Morris
2 Central. Is that correct?

3 MS. HOWLETT: Your Honor --

4 THE COURT: That's not a question.

5 THE WITNESS: I'm not sure -- I'm not sure
6 what -- yeah.

7 THE COURT: Yeah, I mean, you asked him the
8 difference between two programs and then you said --
9 and he had --

10 MS. WARSHAW: Okay. I'll rephrase it.

11 THE COURT: Thank you.

12 BY MS. WARSHAW:

13 Q At the April 6th, 2017 IEP meeting, you were
14 aware that J.H. had difficulty walking in the door of
15 the school at West Morris Central. Is that correct?

16 A Yes, that is correct.

17 Q Okay. So, isn't it true that at the April
18 6th, 2017 IEP meeting, you did not distinguish whether
19 the behavioral support program at West Morris Central
20 was any different from the Mendham High School
21 behavioral support program -- that they were one and
22 the same, just different locations? Is that correct?

23 A No, I never implied that they were the same
24 program. That's actually why I asked Ms. Vasser to
25 come in to clarify the -- and the -- yes, that's --

Colloquy / Cusack - Redirect

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1 MS. WARSHAW: Your Honor, I would just renew
2 our objection to any information regarding the Being
3 Successful Program, as it was never provided to us when
4 we requested it and we requested all the information
5 for the behavioral support programs, both at each high
6 school, as well as the Being Successful Program that
7 they're claiming existed. But I have no further
8 questions at this time.

9 THE COURT: Redirect?

10 MS. HOWLETT: Yes, Your Honor. Just a note on
11 that last objection. What was previously moved into
12 evidence as P-31, which was petitioner's exhibits, is
13 the brochure for the Mendham High School Being
14 Successful Program.

15 THE COURT: Actually, that wasn't moved.

16 MS. WARSHAW: No, it was not moved in.

17 MS. HOWLETT: Oh, I'm sorry. It was not moved
18 in. I'm noting that.

19 Yes, Your Honor, just briefly. I'll try and
20 wrap it up.

21 THE COURT: Okay.

22 REDIRECT EXAMINATION BY MS. WARSHAW:

23 Q Just real quickly, we're just going to fly
24 through this real quick.

25 A Sure.

Cusack - Redirect

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1 Q Can you just flip to R-15 real quickly? I
2 know that counsel just referred you to that letter.

3 A Sure.

4 Q It's the January 6th letter.

5 A Yes.

6 Q And again, I believe you testified on this
7 earlier, but just for clarification, did you receive
8 any formal assessment report or evaluation with this
9 letter --

10 A No, I did not.

11 Q -- to your recollection?

12 A Not to my recollection. There was nothing that I
13 recall seeing with this letter. This was just a letter
14 to support the medical basis of proceeding with the --
15 with a CST evaluation.

16 Q And were you at the IEP meeting on May 16th,
17 2017?

18 A Yes, I was.

19 Q And to your recollection, what program was
20 discussed at that meeting?

21 A The Mendham High School program.

22 Q And did you -- referring to P-26, that's the
23 IEP for that meeting that we just discussed --

24 A Yes.

25 Q -- did you prepare this document?

Cusack - Redirect

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1 A P-26 --

2 Q Yeah, you're in the -- it's in the blue
3 binder.

4 A Okay.

5 Q It's the IEP.

6 THE COURT: What was the number for that?

7 MS. HOWLETT: It's just the IEP. You don't
8 have to flip to it, really.

9 THE COURT: Okay.

10 MS. HOWLETT: I just wanted to ask --

11 THE COURT: I just want the numbers to be --

12 MS. HOWLETT: Oh, I'm sorry. It's P-26, Your
13 Honor.

14 THE COURT: Thank you.

15 MS. HOWLETT: And I just want to ask the
16 witness whether he prepared this document.

17 THE WITNESS: I did not prepare this document.

18 BY MS. HOWLETT:

19 Q And referring to -- counsel referred you to
20 J.H.'s report cards from seventh and eighth grade.

21 A Yes.

22 Q And just for clarification, was she enrolled
23 in your school district in seventh and eighth grade?

24 A She was not.

25 Q And were you her counselor during that time

1 period?

2 A No, I was not.

3 Q And would you generally have knowledge of
4 whether a student not enrolled in your district is
5 having a problem with a teacher?

6 A No.

7 Q Do you know whether the parents ever observed
8 the program at Mendham High School?

9 A I believe they went one -- they went one day, but
10 that's -- to my knowledge, they did go on day with J.H.
11 Again, I may be wrong, but it's my understanding that
12 they -- they did.

13 Q Yeah, to your recollection.

14 A To my recollection, they went to observe the
15 program at Mendham.

16 MS. HOWLETT: And last question, I believe,
17 Your Honor.

18 BY MS. HOWLETT:

19 Q R-14 -- back to that letter from ICCPC from
20 December, if you just want to skim it real quickly.
21 Does that letter indicate anywhere that J.H. -- oh, I'm
22 sorry; I'll give you a second.

23 A That's okay.

24 Q I promised fast, so I'm moving right along
25 here.

1 A Good.

2 Q Does that letter indicate anywhere that J.H.
3 is, quote, "having anxiety walking through the door at
4 West Morris Central?"

5 A I'm sorry. I just want to make sure I'm on the
6 right one. Fourteen?

7 Q Fourteen, yes.

8 A Okay. This was the note indicating that they
9 cleared her to return to West Morris Central, so, no,
10 there is no indication in here that she is not able to
11 walk through the door.

12 MS. HOWLETT: Thank you, Your Honor. That's
13 all I have.

14 MS. WARSHAW: Your Honor, may I ask a few
15 question?

16 THE COURT: Yeah, sure.

17 MS. WARSHAW: Okay.

18 RECROSS EXAMINATION BY MS. WARSHAW:

19 Q But, Mr. Cusack, you just testified that it
20 was your recollection that the reason she was unable to
21 return to school was because she had trouble -- one of
22 the reasons was she had trouble walking through the
23 door of the high school, as it created anxiety. Isn't
24 that correct?

25 A That's correct, and that was the -- December 10th,

1 I believe, was the date that she was -- that I was
2 notified she was not able to return. This is the
3 psychiatrist's and clinician's professional opinion
4 that she is cleared to return to West Morris Central.

5 Q Okay. Mr. Cusack, you testified that you
6 attended the May 16th, 2017 IEP meeting, correct?

7 A Yes, I did. That's correct.

8 Q Okay. And you're aware that Dr. David Leigh,
9 the former director of special services, also attended
10 that meeting, correct?

11 A Yes.

12 Q Okay. Isn't it true, at the May 16th, 2017
13 IEP meeting, Dr. David Leigh indicated to my clients to
14 go take a look at the Purnell School, that it was one
15 that had been mentioned, and that he would definitely
16 look at it?

17 A I cannot specifically state that -- what was said.
18 My recollection was that -- I believe -- I believe this
19 entire conversation was taped, so I don't know if we
20 can go -- I don't know. I believe he said that he --
21 when several schools were mentioned, he -- Purnell -- I
22 believe, by counsel -- he -- I recall him saying, "I
23 would consider Purnell." I believe that would --
24 again, I can't remember word for word, but --

25 Q And isn't it true that at that May 16th, 2017

Cusack - Recross / Colloquy

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1 IEP meeting that, when I asked Dr. David Leigh if the
2 school district would pay for the Purnell School, he
3 indicated "possibly?"

4 A I can't remember what he -- again, I cannot
5 remember anything to do with finances. I was there,
6 but I can't remember. That's something that I just
7 wouldn't have anything to do with.

8 Q Isn't it true, at the May 16th, 2017 IEP
9 meeting, that Dr. David Leigh said that the Purnell
10 School had a peer group there and that there were
11 certain things there that others truly, in his opinion,
12 did not offer?

13 A Again, I can't -- I cannot recall specifically
14 things that he mentioned about -- about that -- about
15 that school. I know the name came up. I do -- I can
16 say -- I can say yes, that name was brought up,
17 initially by you, and then he, from what my
18 recollection was, he said that's something we could
19 talk about -- again, something to that effect. It
20 might not be word for word, but --

21 MS. WARSHAW: All right. Thank you very much.

22 THE COURT: Who's next?

23 MS. HOWLETT: Your Honor, could we just take a
24 short recess?

25 THE COURT: Sure. How short?

Colloquy

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1 MS. HOWLETT: Oh, really short. Yeah, just to
2 regroup real quickly and --

3 THE COURT: Eleven thirty.

4 MS. HOWLETT: That's more than a --

5 MS. WARSHAW: Can I ask who the next witness
6 is?

7 THE COURT: You can ask her. I don't know the
8 witness.

9 MS. WARSHAW: Who's the next witness?

10 MS. HOWLETT: Kendra Dickerson.

11 THE COURT: The witness just asked me if I
12 wanted a copy of a document. Yes, when you come back
13 into the room, please bring it. Before we go on the
14 record, I'll have copies made so everybody has a copy
15 of the -- with the missing line on it. Okay?

16 MS. WARSHAW: Your Honor, I'm just going to
17 reserve my right in case there is something on that
18 last line that I need to ask him a question on.

19 THE COURT: Sure.

20 MS. WARSHAW: I'd like to be able to do that.

21 THE COURT: Not a problem. Okay?

22 MS. WARSHAW: Thank you.

23 MS. HOWLETT: Thank you, Your Honor.

24 THE COURT: We'll go off the record.

25 (BRIEF RECESS)

Colloquy / Dickerson - Direct

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1 THE COURT: We're back on the record in the
2 matter of F.H. and M.H. on behalf of J.H. vs. West
3 Morris Regional High School. The docket number is EDS
4 10706. We have concluded Mr. Cusack's examination and
5 we have a young lady sitting here.

6 Hello. How are you?

7 THE WITNESS: Hello.

8 THE COURT: Would you raise your right hand?
9 K E N D R A D I C K E R S O N, RESPONDENT'S WITNESS,
10 SWORN.

11 THE COURT: State your name. Spell your last
12 name.

13 THE WITNESS: Kendra Dickerson. My last name
14 is D-I-C-K-E-R-S-O-N.

15 THE COURT: Thank you.

16 Proceed.

17 DIRECT EXAMINATION BY MS. HOWLETT:

18 Q Hi, Ms. Dickerson. How are you doing today?

19 A Good. How are you?

20 Q Good. Just for purposes of the record, we're
21 just going to establish your employment and your
22 background, so if you could just state for the record
23 what your position and place of employment is.

24 A I'm a certified school psychologist at West Morris
25 Central High School.

Dickerson - Direct

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1 Q And how long have you been a school
2 psychologist at West Mendham -- I'm sorry -- West
3 Morris?

4 A This is my seventh year.

5 Q And then what did you do before that?

6 A I was -- I did an intern year as a school
7 psychologist, as well, and then, prior to that, I was a
8 graduate student.

9 Q And where did you go to school?

10 A I did my undergraduate at SUNY Albany in Upstate
11 New York, and then, my graduate work at Alfred
12 University in New York as well.

13 Q And what degrees did you get from that
14 academic background?

15 A I have a master's in school psychology and then a
16 certificate of advanced graduate study in school
17 psychology as well. My bachelor's was in psychology.

18 Q And are you also a case manager?

19 A Yes.

20 Q And you know why we're here today -- the
21 student we're talking about?

22 A Yes.

23 Q And we're going to refer to her as J.H. for
24 purposes of the record, so --

25 A Okay.

Dickerson - Direct

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1 Q Just so you're aware of that. How did you
2 come to know J.H. or do you know her at all? Give us
3 just a little background of how you kind of play into
4 everything.

5 A I've met her briefly on a couple occasions, first
6 of which, I think -- I think I first came to kind of
7 know her through Joe Cusack, who was her guidance
8 counselor. And I had some conversations with the
9 family when I believe they were kind of starting to go
10 through the process of the 504 and J.H. was having some
11 difficulties coming to school.

12 Q And do you remember, like, about what time --
13 you know, what school year that would have been?

14 A Last school year.

15 Q Which was the -- for purposes of the record,
16 some of these questions might be a little redundant.

17 A Okay. Yeah, so that was the 16/17 school year.

18 Q Did you receive a referral?

19 A Yes.

20 Q And is that something that you would normally
21 review, a CST referral?

22 A Yes.

23 Q And can you just turn -- there's two binders
24 in front of you; you're going to use the black one.

25 A Uh huh.

Dickerson - Direct

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1 Q And just turn to R-2. It's already been
2 admitted. It's the second tab there.

3 A Yes.

4 Q And is that the referral that you received
5 from Mr. Cusack?

6 A Yes.

7 Q For J.H.

8 A Yes.

9 Q And just switch to the next one, R-3. It's
10 entitled "Pre-Referral Intervention Information." Do
11 you also receive this as part of the referral?

12 A Yes.

13 Q And you've seen this before?

14 A Yes.

15 Q And did you review it when you received it?

16 A Yes.

17 Q And then what happens -- just in your general
18 practice for a second, what happens when you receive a
19 CST referral?

20 A Typically, when the child study team receives a
21 referral, an administrative assistant will reach out to
22 the family to set up an initial planning IEP meeting
23 and it would be assigned to a case manager and the team
24 to review the initial referral packet, and then the
25 family would be invited in to discuss the nature of the

1 concern.

2 Q Did you do that with J.H., if you recall?

3 A Yes.

4 Q Can you please turn to R-4? And just before
5 we talk about the document, I'm just going to have you
6 describe what this is for the Court.

7 A This is our standard form for an invitation to an
8 initial meeting.

9 (R-4 Marked for
10 Identification)

11 Q And is this something that you would normally
12 send out, that you were just describing?

13 A Typically, our administrative assistant would send
14 it out, but yes.

15 Q Have you seen this particular form before?

16 A Yes.

17 Q And can you just give us the date for the
18 record?

19 A The date on the form is January 3rd, 2017.

20 MS. HOWLETT: Your Honor, I would like to move
21 R-4.

22 THE COURT: Any objections? Actually, this
23 one's dated -- oh (out of microphone range.) Any
24 objection?

25 MS. WARSHAW: No.

Dickerson - Direct

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1 MS. HOWLETT: To clarify the dates, Your Honor

2 --

3 THE COURT: No, no. It says January 3rd.

4 MS. HOWLETT: Oh, okay.

5 THE COURT: I, for some reason, saw four. No
6 objection. Go ahead. Proceed.

7 (R-4 Entered into
8 Evidence)

9 BY MS. HOWLETT:

10 Q And Ms. Dickerson, this -- this form, does it
11 actually schedule a meeting with the parents?

12 A Yes.

13 Q And what was the date of that proposed
14 meeting?

15 A January 9th at 1:37.

16 Q To your recollection, did you actually have
17 an evaluation planning meeting?

18 A Yes.

19 Q At an evaluation planning meeting of this
20 nature, for an initial referral, what type of
21 information do you take into consideration when making
22 a decision as to what assessments you're going to
23 propose?

24 A It's mainly the information that's available from
25 the referral packet. The guidance counselor is

1 typically there, as well, with background information
2 about how the student has been doing, and anything else
3 that's brought to the table that's pertinent at that
4 time.

5 Q Do you remember, from just your own memory,
6 what you would have reviewed to determine what
7 assessments you were going to propose for J.H.?

8 A The referral packet and I believe at that time
9 there --

10 MS. WARSHAW: Could you just speak up a little
11 bit? It's hard to hear.

12 THE WITNESS: Sure. And I believe, at that
13 time, she did have an outside provider, so any
14 information from them would have been pertinent to
15 discuss as well.

16 BY MS. HOWLETT:

17 Q And again, without necessarily looking, just
18 from your memory, do you recall what evaluations or
19 assessments that you had proposed or the child study
20 team had proposed?

21 A Yeah. I believe the child study team had
22 recommended a psychological evaluation. (Out of
23 microphone) some emotional (out of microphone range)
24 and then an update from the treating psychiatrist at
25 the time and a social history report.

1 Q And were the parents present at that meeting?

2 A Yes.

3 Q Was J.H. present also? Do you recall?

4 A Yes, I believe so.

5 Q Did the parents consent to the proposed
6 assessments?

7 A Yes.

8 Q Did they raise any concerns or request any
9 additional assessments or anything like that?

10 A I don't recall.

11 Q Do you recall whether there was a mention
12 that -- from J.H.'s parents, that J.H. was struggling
13 with any academic difficulties?

14 A I don't recall.

15 Q Do you recall getting any reports from any
16 teachers that indicated that there were academic issues
17 in the classroom with J.H.?

18 A No, there was nothing at that time that we were
19 concerned academically. The history was that she was a
20 strong academic student.

21 Q So, to your recollection, were the proposed
22 assessments actually conducted?

23 A Yes.

24 Q If I could just direct you to R-16 and if you
25 could just describe, just generally, what this document

1 is.

2 A This is a psychological evaluation.

3 (R-16 Marked for

4 Identification)

5 Q Was it for J.H.?

6 A Yes.

7 Q Was this the evaluation report that was
8 conducted in response to the initial referral?

9 A Yes.

10 Q And who conducted that evaluation?

11 A This was conducted by Sherrie Wilke. She was --
12 at that time, I was out on maternity leave. Sherrie
13 had attended that initial meeting with me. It was
14 right before I went out on maternity leave, so she was
15 acting as the case manager and school psychologist at
16 the time, in my position, while I was out.

17 Q Have you seen this document before?

18 A Yes.

19 MS. HOWLETT: Your Honor, I would like to move
20 R-16?

21 THE COURT: Any objection?

22 MS. WARSHAW: This witness did not --

23 THE COURT: She didn't author it.

24 MS. WARSHAW: She didn't author it or
25 anything, so I'm going to object to that -- to that.

1 And also, there are a lot of mistakes in it, but --

2 THE COURT: That's not a reason to object to
3 it.

4 MS. WARSHAW: Right. So, I would -- I'm going
5 to object. She's not the author to this and --

6 THE COURT: (Out of microphone range)

7 MS. WARSHAW: -- she doesn't have personal
8 knowledge of it.

9 THE COURT: Well, I'm sure she has personal
10 knowledge.

11 Are you going to call Ms. Wilke?

12 MS. HOWLETT: Not likely. I mean, the purpose
13 of proffering it to this witness is that -- I'm not
14 going to testify for her, but it's to ask about whether
15 this document was material in her later actions at
16 proposal.

17 THE COURT: I'm going to allow it because I'm
18 guessing -- I'm not guessing -- I'm going to allow it
19 at this point.

20 You know what? Why don't you voir dire a
21 little bit on what she knows about it and see if --
22 okay?

23 MS. WARSHAW: Okay.

24 THE COURT: You don't have to. You want me to
25 do it?

1 MS. WARSHAW: Go ahead. I can do it as well.

2 THE COURT: Go ahead.

3 MS. WARSHAW: Okay.

4 VOIR DIRE EXAMINATION BY MS. WARSHAW:

5 Q Ms. Dickerson, you didn't write this report,
6 correct?

7 A No.

8 Q And what date did you go on maternity leave?

9 A I went on maternity leave -- I believe it was -- I
10 think my last day was -- January 13th, 2017, I think,
11 was my last day and I came back April 17th.

12 Q And -- okay, so this -- the evaluation report
13 was dated January 19th, 2017, so you were not present in
14 the district at that time.

15 A No, I was on maternity leave.

16 Q Did you have any contact with Sherrie Wilke
17 about her evaluation during the time that you were on
18 maternity leave?

19 A No, I don't believe so.

20 Q Okay. So the first time that you saw this
21 document was when?

22 A I don't recall, but I would imagine when I
23 returned from maternity leave.

24 Q Okay. And so, you were not present at the
25 April 6th, 2017 IEP meeting.

1 A No, I was not.

2 Q Okay. So you wouldn't be able to testify as
3 to what happened at that meeting or any results that
4 were discussed at that meeting?

5 A No.

6 Q Okay. You don't know if this document was
7 done in the ordinary course, according to District
8 standards, right? You don't have personal knowledge of
9 that?

10 A No, it's an individualized assessment, so no one
11 is typically in the room while it's administered.

12 THE COURT: Say that again. I didn't hear
13 you.

14 THE WITNESS: It's an individually
15 administered assessment, so it would only be the
16 psychologist and the student in the room anyway, in any
17 setting.

18 BY MS. WARSHAW:

19 Q But you --

20 A But, no, I was not working for the District at
21 that -- I was on maternity leave during that time.

22 Q And you cannot personally vouch for the
23 credentials or the manner in which Sherrie Wilke
24 performed this evaluation. Is that correct?

25 A Correct.

1 Q And --

2 THE COURT: You can stop.

3 MS. WARSHAW: Okay.

4 MS. HOWLETT: Your Honor, the witness isn't
5 here to testify of the probative value of the objective
6 data that's contained in the report. It's her
7 impressions of what the report represents. Number one,
8 she's a certified school psychologist, so she is
9 actually qualified to interpret this report, and it
10 also goes to what the District -- the information that
11 had been provided to the District and what their
12 response was.

13 THE COURT: I understand that, but what help
14 is she going to be to me? She didn't do the report.
15 She wasn't at the IEP meeting. She doesn't know what
16 happened at the IEP meeting. She doesn't --

17 MS. HOWLETT: There was a subsequent -- I'm
18 sorry, Your Honor.

19 THE COURT: Go ahead. Go ahead.

20 MS. HOWLETT: There was a subsequent -- I'm
21 trying not to stem into testimony. There was a
22 subsequent IEP meeting and the witness is going to
23 testify to what her involvement in the drafting of the
24 IEP was, which is certainly relevant.

25 THE COURT: Did this report and the first IEP

1 meeting result in a proposed IEP?

2 MS. HOWLETT: No, Your Honor.

3 THE COURT: It did not. I'm going to allow

4 it. Go. I'm going to allow it.

5 MS. WARSHAW: Your Honor, there is an April

6 6th, 2017 IEP that they did. The IEP --

7 MS. HOWLETT: (Out of microphone range)

8 THE COURT: Go ahead. Go ahead.

9 MS. WARSHAW: She wasn't around until April

10 19th.

11 THE COURT: That, I know.

12 MS. WARSHAW: But the IEP -- let me just

13 locate it.

14 THE COURT: The IEP meeting was April 6th. She

15 wasn't there. When was the IEP presented?

16 Do you know, Ms. Howlett?

17 MS. WARSHAW: April 6th, 2017. She wasn't

18 there and she didn't draft the IEP.

19 THE COURT: All right. Okay.

20 MS. HOWLETT: Can we ask the fact witness

21 whether she drafted the IEP --

22 THE COURT: We could.

23 MS. HOWLETT: -- instead of testifying for

24 her?

25 THE COURT: All right. Go ahead.

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1 DIRECT EXAMINATION BY MS. HOWLETT (CONT'D):

2 Q Ms. Dickerson, did you draft the IEP?

3 A I did for the May meeting.

4 THE COURT: There was a second IEP meeting.

5 Yes?

6 THE WITNESS: Yes.

7 MS. HOWLETT: Yes.

8 THE COURT: I'm asking her.

9 There was a second IEP meeting --

10 THE WITNESS: In May.

11 THE COURT: -- which you were at?

12 THE WITNESS: Yes.

13 THE COURT: I'm going to allow this. Go. I'm
14 going to allow it.

15 (R-16 Entered into
16 Evidence)

17 MS. HOWLETT: Thank you, Your Honor.

18 THE COURT: Go.

19 BY MS. HOWLETT:

20 Q Ms. Dickerson, did you review this document
21 that we keep talking about, R-16, as part of your --

22 THE COURT: Ms. Howlett, what I'd like you to
23 do first is get us from the first IEP meeting to the
24 second IEP meeting --

25 MS. HOWLETT: Okay.

1 THE COURT: -- if you can with this witness.

2 MS. HOWLETT: Yes.

3 BY MS. HOWLETT:

4 Q Ms. Dickerson, you testified before, but I
5 didn't catch the date. Do you recall when you went out
6 on maternity leave?

7 A I believe my last day was January 13th.

8 THE COURT: And she returned April 17th. She's
9 testified to that.

10 MS. HOWLETT: Okay, thank you. I just didn't
11 have that in front of me.

12 BY MS. HOWLETT:

13 Q You testified you were not present at the
14 April meeting?

15 A Right, I was not present at the April 6th meeting.

16 Q Do you recall -- not being present --

17 MS. HOWLETT: -- strike that, Your Honor.

18 BY MS. HOWLETT:

19 Q Upon your return from maternity leave, did
20 you consult with Ms. Wilke about your existing cases
21 that she had taken over?

22 A Yes.

23 Q Was this one of those cases, J.H.?

24 A Yes.

25 Q Did Ms. Wilke report to you or provide any

1 case note or any information about what had transpired
2 at the April meeting?

3 A She told me about the April meeting.

4 Q And what did Ms. Wilke report to you?

5 A My understanding of the April meeting was that
6 eligibility was proposed and agreed to and they had
7 discussed a possible placement option of the BSP
8 program over at Mendham, and that was not agreed upon
9 at the time, but the parents were instructed to look at
10 the program, which -- my understanding.

11 THE COURT: You need to speak up.

12 THE WITNESS: Oh, I'm sorry.

13 THE COURT: Okay. Go ahead.

14 THE WITNESS: Yeah, so that was my
15 understanding -- was that eligibility had been
16 determined at the meeting and there had been a
17 discussion of a proposed program at the BSP program
18 over at Mendham that, to my understanding, was not
19 agreed upon at that time, but that the parents were
20 going to go look -- look at the program.

21 BY MS. HOWLETT:

22 Q Was there an agreement that a subsequent
23 meeting would be held?

24 A I don't -- I don't know when that was decided on,
25 but when I came back to the District, my understanding

1 was that there would be another meeting and that
2 attorneys would be present.

3 Q And to your recollection, what was the
4 purpose of the second meeting?

5 A My understanding was it was to discuss placement
6 because no -- no formal IEP had been agreed on.

7 Q And at the May 16th meeting, did you attend?

8 A Yes.

9 Q And was an IEP proposed at that time?

10 A Yes.

11 Q And was the IEP or the proposed placement
12 discussed at that meeting?

13 A Yes.

14 Q In preparation for that meeting, did you
15 prepare an IEP?

16 A Yes.

17 Q And in preparation of that IEP, did you
18 consider this document, R-16? It was the
19 aforementioned --

20 A Yes.

21 Q -- Ms. Wilke's psychological report.

22 A Yes. It was -- that IEP was developed in
23 conjunction with Sherrie Wilke's -- my understanding of
24 the -- what program had been proposed, and also
25 speaking with the director.

1 MS. WARSHAW: Can you speak up? I'm sorry.

2 We can't hear you at all from the stand.

3 THE WITNESS: I'm sorry.

4 Yes, so that -- that IEP that was developed
5 was to have, you know, a more formalized --

6 MS. WARSHAW: (Out of microphone range)

7 THE COURT: It's not -- it's not the --

8 MS. WARSHAW: Maybe it's the air conditioning.

9 MS. HOWLETT: The vent or something.

10 THE COURT: Yeah, sometimes they put those --
11 that, I can't turn off because it's the other unit.
12 I'm sorry. Okay. I'm sorry.

13 MS. HOWLETT: No, that's okay.

14 THE COURT: I interrupted you because of the
15 fan noise.

16 BY MS. HOWLETT:

17 Q Yes, just do your best to speak up. I know
18 you're soft-spoken.

19 A I'm sorry.

20 Q It's not about you, but --

21 A Yeah. Yeah, the IEP was proposed to be able to
22 discuss that at the meeting because it wasn't
23 formalized, to my knowledge, at the April 6th meeting.
24 So it was information from Sherrie Wilke and, you know,
25 and conversations, you know, with the director to, you

1 know, propose the IEP -- the program.

2 Q And did that happen at that May meeting?

3 A Yes.

4 Q So, going back to the psychological report of
5 Ms. Wilke, without -- I mean, we certainly don't want
6 you to read it into the record, but do you recall
7 reviewing this when you prepared the IEP?

8 A Yes.

9 Q Does it look familiar to you?

10 A Uh huh.

11 Q And can you just flip to the summary
12 conclusion? That's what we do as lawyers, pretty much.
13 Can't really read the rest. It's, I think, at the
14 bottom, marked 061 -- 061.

15 A Yes.

16 Q And again, without kind of reading it, can
17 you just, in your own words, sort of summarize what
18 your impressions were when you read this summary
19 conclusion?

20 A I mean, as a school psychologist, we're typically
21 looking at the scores that were obtained from the
22 assessment. The full-scale IQ from this particular
23 assessment done by Sherrie, as it's reported, is a 104.
24 Anything between 90 and 110 is considered average on
25 these types of assessments, so that, to me, would be

1 saying that her intellectual functioning was within
2 average ranges. And then it breaks it down into the
3 four main areas, and on this particular assessment, the
4 verbal comprehension was found to be in the high
5 average range, the perceptual reasoning was within the
6 average range at 107, working memory was in the low
7 average range with 86, and the processing speed index
8 was 94, which was within the average range. And that
9 was the summary of the report.

10 Q And then moving onto the next page, it looks
11 like Ms. Wilke continues to make additional -- or
12 continues to summarize her report. That last
13 paragraph, can you talk about, in your experience as a
14 school psychologist and also as a case manager, can you
15 talk a little bit about, as compared to her peers, that
16 paragraph, what Ms. Wilke might be referring to?

17 A Yeah. I think for this paragraph -- and forgive
18 me; I only took a few seconds to read it -- but I think
19 that this particular paragraph is more in relation to
20 the behavioral scale.

21 Q And what --

22 A The BASC was given as well, yeah.

23 Q Can you just tell us a little bit about the
24 BASC?

25 A It's a -- it's a behavior assessment scale that,

1 typically, it's based on -- it can be a teacher rating
2 form, a parent rating form, and a child rating form.
3 It looks like, in this report, only the child and the
4 parent were given. But basically, it assesses -- it's
5 a -- it's kind of like a questionnaire that a student
6 would fill out themselves in regard to a lot of
7 different questions about their behavior, as well as a
8 parent would also answer that.

9 So it would tap into a lot of different things to
10 find if there's anything behaviorally or emotionally,
11 kind of, to cue into. So it looks at things like
12 attention. It looks at sort of, like, a student's
13 attitude towards their teachers or attitude towards
14 school and things like that. It's just a way to gather
15 more information about the home perspective as well as
16 the student's own perspective.

17 Q So, when it's -- it's entitled -- is it
18 "behavior" or "behavioral" -- the BASC? It is -- but
19 it's the word "behavior."

20 A Behavior, yeah.

21 Q So does it just refer to things like poor
22 behavior or are we talking emotional difficulties as
23 well?

24 A It does -- it will elicit things like -- like
25 acting out behaviors, as well as internalizing

1 behaviors -- things like anxiety, things like
2 inattention. So, it can be any of those things. It's
3 a big questionnaire.

4 Q And so, what did Ms. Wilke determine as part
5 of her review of that information?

6 A Well, the first part, she talks about the self-
7 rating scale, so on that area, on the self-rating
8 scale, it appears that the student did not themselves
9 rate themselves in a way that would find that these
10 first areas like sensation seeking, atypicality, (out
11 of microphone range) control, attention problems,
12 hyperactivity, relations with parents, self-reliance,
13 test anxiety, anger control, and mania -- those were
14 all, like, self-reported to be typical. And then,
15 however, the student rated herself -- the way she
16 responded on this particular form found things to be in
17 at-risk ranges in terms of her attitude towards school,
18 social stress, anxiety, depression, sense of
19 inadequacy, somatization, self-esteem, and ego
20 strength. So those would be things that -- the way she
21 -- the way she responded to the questions on the
22 questionnaire would put the scores to be within, kind
23 of, at risk ranges or those are the types of things we
24 would be concerned with or want to pay more attention
25 to or might need additional -- warrant follow-up for

1 more investigation. And then, the more significant
2 areas that she noted were attitude towards her teachers
3 and interpersonal relationships, so that would be the
4 most concerning areas.

5 Q And when you reviewed Ms. Wilke's report,
6 what was -- what did you really take away from it?
7 What does this tell you about J.H. -- what her needs
8 might be?

9 A Well, I mean, in terms of the intellectual
10 ability, it tells me that the student is within the
11 typical range compared to -- compared to other students
12 her age, with a little bit of a strength in the verbal
13 comprehension and verbal skills, which is really nice
14 to see, with a relative weakness in working memory.
15 And then it shows also that she was having some kind of
16 emotional or kind of internalizing concerns, like, what
17 they're -- like the way that she, herself, viewed, you
18 know, her attitude towards teachers and some of the
19 anxiety. Yeah, that she was struggling with social
20 stress, anxiety, depression, inadequacy -- a lot of
21 those internalized struggles.

22 Q And did you review additional reports in
23 addition to Ms. Wilke's report when you prepared the
24 IEP?

25 A Yeah, I probably would have also referred back to

1 the initial referral packet and, you know, the
2 conversations with Ms. Wilke about what was planned and
3 proposed, and any other additional reports, including
4 the other things that were conducted as part of the
5 initial -- the social history report and anything from
6 their outside providers that had been provided as well.

7 Q Just turning your attention to R-18, please,
8 and can you just describe what this document is for the
9 Court?

10 A This is a social history report.

11 (R-18 Marked for
12 Identification)

13 Q For J.H.?

14 A Yes.

15 Q And have you seen this before?

16 A Yes.

17 Q And then, did you conduct the social
18 assessment?

19 A No.

20 Q Did you review this report when you prepared
21 the IEP?

22 A Yes.

23 MS. WARSHAW: Your Honor, I'm going to object
24 with the same objections that I had originally. She
25 was not there. She did not conduct this evaluation.

1 She has no personal knowledge of this, so --

2 THE COURT: Who did it?

3 MS. HOWLETT: The school social worker, Your
4 Honor.

5 THE COURT: Are you going to call --

6 MS. HOWLETT: I didn't intend to call every
7 member of the child study team to authenticate each
8 report. The IEP was prepared by the case manager with
9 the information that was provided to her.

10 THE COURT: I'm going to allow it. Her
11 objection is noted.

12 Go ahead. It's not in yet, but I'm going to
13 -- go ahead.

14 MS. HOWLETT: Well, I'm going to -- I'm asking
15 to move it.

16 THE COURT: I know you are, but -- all right.

17 (R-18 Entered into
18 Evidence)

19 BY MS. HOWLETT:

20 Q Ms. Dickerson, was there anything notable
21 from the social assessment that was helpful in
22 preparing the IEP?

23 A It really just provided a snapshot at that time of
24 what was -- what was being reported as to how the
25 student was functioning. And it was an interview with

1 the parents, so it had information from their
2 perspective as well.

3 Q And again, we're going to go through the same
4 process. If you could just flip to R-19 and if you
5 could just describe what this document is.

6 A This is a psycho-educational testing report, so it
7 would be more comprehensive than a typical
8 psychological report; it would also include educational
9 testing as well. And my understanding was this was a
10 third party evaluation that was done later.

11 (R-19 Marked for
12 Identification)

13 MS. HOWLETT: Your Honor, I'm actually not
14 going to move this document in at the moment, so I'd
15 like to go back. I apologize, Your Honor.

16 THE COURT: Okay. No problem.

17 BY MS. HOWLETT:

18 Q Ms. Dickerson, can you just switch over to
19 what's marked as R-17 and can you just describe what
20 this document is?

21 A This is a psychiatric evaluation.

22 (R-17 Marked for
23 Identification)

24 Q And the date?

25 A The date on it is March 15th, 2017.

1 Q And have you seen this document before?

2 A Yes.

3 Q And was this document a document you used to
4 propose the IEP?

5 A Yes.

6 Q And this is for J.H.?

7 A Yes.

8 MS. HOWLETT: Your Honor, I'd like to move R-
9 17.

10 THE COURT: Any objection?

11 MS. WARSHAW: No objection.

12 (R-17 Entered into
13 Evidence)

14 BY MS. HOWLETT:

15 Q Ms. Dickerson, who was the -- do you know who
16 this report was conducted by? You didn't conduct this
17 evaluation, right?

18 A No, I didn't conduct this evaluation. My
19 understanding was this was her treatment provider at
20 the time.

21 Q So this, to your knowledge, was not conducted
22 by a district employee --

23 A No.

24 Q -- or a child study team member?

25 A No.

1 Q Did you consider the psychiatric evaluation
2 report when you prepared the IEP?

3 A Yes.

4 Q Ms. Dickerson, if you could just turn to page
5 -- well, it's marked at the bottom "065" in that
6 report. It's the third page, I think. There is -- and
7 I know you're not a psychiatrist, but we just want to
8 talk about what your impressions were of what's in the
9 report. There's some diagnoses in there and an
10 assessment and then some recommendations. That's at
11 least how I read it. Is that -- is that accurate?

12 A Yes.

13 Q Can you please talk to us a little bit about,
14 when you look at this, you know, what you're really
15 looking for?

16 A We're looking at the summary and at the diagnosis
17 and what the -- what the recommendations are at the
18 time.

19 Q And what was the recommendation of this
20 provider?

21 A This provider says, "At this time, an out-of-
22 district placement is advised."

23 Q And then there's another -- is there another
24 recommendation on the second page?

25 A Yeah. "J.H. needs regular follow-up with a child

1 psychologist for medication management and a
2 psychotherapist for counseling."

3 Q So the recommendation for an out-of-district
4 placement, did you consider the recommendation that's
5 in this report? Is that confusing?

6 A A little bit.

7 Q Okay. Strike that. You testified earlier
8 that you considered the report when you prepared the
9 IEP. Is that accurate?

10 A Uh huh.

11 Q This report indicates, as you just read, that
12 this provider was recommending an out-of-district
13 placement.

14 A Uh huh.

15 Q Did you see that when you reviewed the
16 report?

17 A Uh huh.

18 THE COURT: You have to say "Yes" or "No."

19 THE WITNESS: Yes. I'm sorry.

20 MS. HOWLETT: Sorry.

21 THE WITNESS: Yes.

22 BY MS. HOWLETT:

23 Q Did you consider the full spectrum of program
24 and placement options when you prepared the IEP?

25 A When I was preparing the IEP, my understanding was

1 to be working with the team to re-establish what had
2 been -- what had been proposed at that meeting -- at
3 that April meeting.

4 Q At the April meeting.

5 A Uh huh.

6 Q And how did you determine that?

7 A Based on all the information from Ms. Wilke and
8 the -- and the reports as well. I wasn't changing it.
9 Like, I wasn't changing that recommendation at that
10 time myself.

11 MS. HOWLETT: Just give me one second, Your
12 Honor, please. I'm sorry.

13 THE COURT: Uh huh.

14 BY MS. HOWLETT:

15 Q Now we're going to flip to the blue binder.

16 A Okay.

17 Q It's going to be P-26, so it will just be the
18 tab that says "26." So, is this -- is this the IEP
19 that you prepared, P --

20 A Oh, 26.

21 Q Yeah. Yeah, take your time. You can look at
22 it.

23 A Yes, this is the IEP, yes, prepared when I
24 returned, in conjunction with Sherrie Wilkes, to
25 describe -- to describe what had been proposed.

1 THE COURT: I don't know if she asked you that
2 question. You answered the question she asked you.

3 BY MS. HOWLETT:

4 Q And can you take us through a little bit of
5 what -- what the proposed program was? Or you can even
6 point to a page, whatever is easier, and then talk
7 about what the proposal was?

8 A Yes. The student had been on home instruction for
9 quite some time, so at that time, the proposed program
10 was to continue with some of the home instruction that
11 was being provided and gradually do a return to the BSP
12 program at Mendham High School in the courses that
13 would make sense for an easy transition for her within
14 that setting and to continue to deliver the home
15 instruction in the areas that it did not for a gradual
16 start to the Mendham BSP program.

17 Q And that would be -- what -- for the
18 remainder of that school year?

19 A Yeah, for afternoons only, for the remainder of
20 that academic year.

21 Q And then what was proposed for the following
22 school year?

23 A The BSP program at Mendham.

24 Q And could you just tell us what "BSP" means
25 or at least what the acronym means?

1 A At Mendham High School, it's the Being Successful
2 Program. At Central High School, it's still referred
3 to as the Behavioral Support Program. The name had
4 changed.

5 Q And now, you don't work in the BSP, right --
6 either BSP?

7 A No.

8 Q Is there a difference in --

9 MS. WARSHAW: I'm sorry, Your Honor. Could
10 you just repeat that because we can't hear your answer.
11 What was that answer?

12 THE WITNESS: At Mendham High School, the BSP
13 program is called the Being Successful Program and at
14 Central High School, it's still referred to as the
15 Behavioral Support Program.

16 MS. WARSHAW: You said something about the
17 name being changed. What did you say?

18 THE WITNESS: I believe, at one point, it
19 might have -- I think that Mendham had called it the
20 similar acronym and I'm not sure if the name had
21 changed at some point.

22 MS. HOWLETT: She's asking -- now we're asking
23 questions.

24 THE COURT: Yeah, we're not doing -- we're not
25 doing cross yet.

1 MS. WARSHAW: We just couldn't hear her. I
2 just wanted to clarify what she answered. That's all.

3 THE COURT: Okay.

4 THE WITNESS: Yeah, the same acronym was used.

5 BY MS. HOWLETT:

6 Q And we're going to get back to that, but in
7 the meantime, in your -- in the IEP that you proposed,
8 at the bottom, page -- it looks like five of twenty --
9 can you tell us what's on this page -- what "Courses of
10 Study" means? (Out of microphone range) obvious.

11 A Under "Courses of Study," grade nine would be what
12 courses she had already completed in grade nine. Grade
13 ten, it would be the list of what she was currently
14 taking -- the home instruction at that time. And then
15 the proposal -- and then, it's a wrap-around IEP, so
16 grade eleven would be what was being proposed then for
17 the following academic school year.

18 Q And then, so, grade eleven, can you just take
19 us through -- we had some prior testimony from Mr.
20 Cusack about the different levels of courses that you
21 guys have to offer. Can you just take us through grade
22 eleven, what -- what classes and what level of those
23 classes that it was proposed that J.H. be enrolled in?

24 A For the following school year?

25 Q Right.

1 A So it wasn't for the remainder. So, grade eleven,
2 she had -- my understanding was she had always been a
3 strong academic student and been recommended for
4 advanced level classes. Within the BSP program, they
5 can differentiate and modify up to those levels if
6 that's what's appropriate for the students, so it was
7 being recommended that English III would be at the
8 advanced level within the BSP room. World History
9 would be at the advanced level within the BSP. French
10 and Algebra II would be regular classrooms.
11 Environmental Science would be academic within the
12 Behavioral Support Program. Gym and health, band, out
13 of class support -- within the BSP program.

14 Q So, would J.H. be taking advanced level
15 courses in the BSP, according to this IEP?

16 A Yes, that was what was proposed.

17 Q It's been noted that, in this IEP -- I'm
18 trying to actually get to the page. I believe on page
19 13 and also at places on 15 -- several places
20 throughout the IEP, it refers to the Mendham High
21 School program, the BSP at Mendham High School, but it
22 identifies it as the Behavioral Support Program, as
23 opposed to what you previously testified to, that the
24 Mendham program was actually known as the Being
25 Successful Program. Can you explain, maybe, the

1 confusion?

2 A At Central High School where I work, the BSP
3 program stands for the Behavioral Support Program. My
4 understanding is that acronym was similarly used at
5 Mendham High School. It may have been originally
6 called the Behavioral Support Program there and at some
7 time, that may have shifted and they started to call --
8 label the program as the Being Successful Program.
9 Typically, we refer to both as the BSP program. I
10 think that's where the confusion was.

11 Q So when you prepared the IEP, did you mean
12 the Being Successful Program or did you mean the
13 Behavioral Support Program?

14 A I meant the Being Successful Program at Mendham
15 High School. The distinction was really which building
16 and in which program, and it was clearly recommended
17 Mendham High School because we felt a change in school
18 would be beneficial for her.

19 Q To your knowledge, is there a difference
20 between the two programs?

21 A Several differences. The nature of the room.
22 Obviously, your makeup of kids are different; it's a
23 different high school. You know, there's, you know,
24 subtle differences between the two -- the two programs.
25 I think the reward system is a bit stronger at Mendham

1 High School and the environment is slightly different.

2 Q To your knowledge, did the parents go and
3 visit the Being Successful Program at Mendham High
4 School?

5 A Yes.

6 Q Did you accompany them there?

7 A No.

8 Q Was there ever any talk at the May meeting
9 which you attended -- I know you can't testify as to
10 the earlier meeting -- but the meeting that you
11 attended, about any programs at West Morris Central?

12 A I'm sorry. Can you repeat that?

13 Q Did you ever have any conversations with the
14 parents about any programs at West Morris Central or
15 did you only discuss programs at Mendham?

16 A I don't recall discussing ones at Central. I feel
17 like we were -- the IEP team felt pretty strongly that
18 having her have a new start with a new peer group would
19 be beneficial.

20 MS. HOWLETT: One moment, Your Honor. I'm
21 sorry.

22 BY MS. HOWLETT:

23 Q And I guess backing up to even propose an
24 IEP, was there an eligibility determination that was
25 made?

1 A Yes, and my understanding is that had been made at
2 the April 6th meeting that I was not at.

3 Q Would you have reviewed the eligibility
4 determination report?

5 A Yes.

6 Q Would that be part of your preparing an IEP?

7 A Yeah.

8 Q Can you please turn to R-9? It's that same
9 binder. Oh, I'm sorry; it's the black binder. And can
10 you just describe what this document is?

11 A This is the eligibility determination report.

12 (R-9 Marked for
13 Identification)

14 Q Is this for J.H.?

15 A Yes.

16 Q Did you review this document? Have you seen
17 this document before?

18 A I've seen it before, yes.

19 Q Did you review this document when you
20 prepared the IEP?

21 A Yes.

22 MS. HOWLETT: Your Honor, I'd like to move R-
23 9.

24 THE COURT: Any objection?

25 MS. WARSHAW: Yes, Your Honor, the same

1 objection, the same reasons as before. She wasn't at
2 the meeting when this was generated. She has no
3 knowledge as to what happened at that meeting. She
4 never authored it. The same objections.

5 THE COURT: Overruled.

6 (R-9 Entered into
7 Evidence)

8 BY MS. HOWLETT:

9 Q Ms. Dickerson, can you take us through what
10 this -- is this a typical eligibility determination
11 report?

12 A Yes.

13 Q Have you prepared these in the past?

14 A Yes, they're typically prepared by our
15 administrative assistant with the summaries of the
16 reports and then we -- the reports that were conducted
17 as part of the evaluation process -- and then, we --
18 yeah.

19 Q And was there a determination that J.H. was
20 eligible for special education based upon this report?

21 A Yes.

22 Q And what was the -- where -- where can that
23 be found? Can you just take us through?

24 A Yes, that's on the second page of the report and
25 that determination is made by the IEP team.

1 Q Are you -- I'm sorry. So what was the
2 classification that was determined or that J.H. was
3 determined to be eligible under?

4 A Emotionally disturbed.

5 Q And can you just, as a case manager and as a
6 certified school psychologist, can you just talk about
7 what that means?

8 A Yeah.

9 MS. WARSHAW: Your Honor, is she testifying as
10 an expert or is she testifying as a fact witness?
11 Because if it's an expert, she needs an expert report
12 and curriculum vitae, which has not been provided.

13 THE COURT: Well, actually, no expert needs an
14 expert report. It happens all the time, but experts
15 don't need a -- I've tried cases, too. You don't need
16 an expert's report to put an expert on the stand.

17 MS. WARSHAW: But she wasn't qualified as an
18 expert.

19 THE COURT: She wasn't -- she's not asking her
20 as an expert. She's the school psychologist. I think
21 she would know the answer to this as the school
22 psychologist.

23 Go ahead.

24 MS. HOWLETT: And I can rephrase slightly.

25 BY MS. HOWLETT:

1 Q Ms. Dickerson, do you, in your role as a case
2 manager, do you make eligibility determinations or
3 assist the child study team in making eligibility
4 determinations?

5 A I assist the child study team, yes.

6 Q And to meet the criteria of emotionally
7 disturbed, no one's going to ask you to cite the code
8 unless you want to, but can you talk about what you, as
9 a case manager, look to when you make an eligibility
10 determination as emotionally disturbed?

11 A Yeah. Under that category, there -- a student
12 would have to meet the criteria under one of -- I
13 believe it's five different areas, and those are things
14 such as that the student has -- and I'm paraphrasing
15 it.

16 Q That's fine.

17 A I can't recite the code without it in front of me.
18 But basically, that a student has had, over a marked or
19 a long period of time, the state of -- a pervasive
20 state of unhappiness or a period of depression. So,
21 that's one area that seems relevant. Also, has
22 developed a tendency to have inappropriate behavior to
23 normal circumstances or to have developed sort of
24 somatization or health complaints in relation to the
25 environment. Those are some of the areas. And an

1 inability to maintain satisfactory interpersonal
2 relationships between peers or teachers. So, you know,
3 those are, under the -- under the Code, those are some
4 of the areas that you would typically -- a student
5 could be classified as emotionally disturbed for
6 exhibiting some of those characteristics.

7 Q So, beyond those characteristics or a
8 diagnosis, when you're looking at eligibility, is there
9 anything else you look to?

10 A To determine the eligibility, what would we look
11 to? Yeah, in order to determine eligibility, we would
12 basically have to just establish, first, does a student
13 have a disabling condition, and that would be through
14 those reports and outside information. And then, how
15 is that impacting the student? Is it -- is it
16 negatively affecting? Like, just -- just having a
17 disability alone doesn't always necessarily mean having
18 a negative educational impact, so you would look to see
19 is it affecting them. And the third thing would be,
20 really, do they need special education and related
21 services in order to account for that disabling
22 condition.

23 Q And when you reviewed this eligibility
24 determination report, does it appear that the parents
25 signed it?

1 A Yes.

2 Q And why do you usually have parents sign the
3 eligibility determination report? What does that mean?

4 A It's stating whether or not they're in agreement
5 with the eligibility and allowing the IEP team to move
6 forward to develop a plan based on that finding.

7 Q Is consent required to go forward with the
8 IEP, with the proposal of an IEP?

9 A Yes.

10 Q In other words, what happens if a parent does
11 not consent to the eligibility determination -- the
12 initial eligibility determination?

13 A An IEP can't -- can't be implemented without
14 initial consent.

15 MS. HOWLETT: I'm sorry to make everybody
16 switch around, but we're going to just talk briefly
17 about the IEP again. You can refer to it if you want.
18 It's P-26 for anyone that wants to. It's the blue
19 binder. Sorry.

20 BY MS. HOWLETT:

21 Q I just want to talk a little bit more about -
22 - I know that you don't work in the BSP at Mendham, but
23 if you could just talk a little bit about what other
24 services you may have proposed or what else this IEP
25 proposes and why. And if you're referring to anything,

1 you can point us to a specific page, if you like.

2 A On the bottom of -- I'm looking at the program
3 page or the program description, which has "15-20" at
4 the bottom right corner. So, basically, just to sort
5 of summarize the IEP, the program that was being
6 recommended was the BSP program at Mendham High School.
7 My understanding is that the student had been out on
8 home instruction for really an extended period of time
9 at this point, so, coming back to a program, in my
10 experience, students really have difficulties with that
11 without a gradual return.

12 She had been doing well on home instruction, so we
13 didn't want to interfere with the processes that were
14 going well, so the recommendation was a gradual return
15 for afternoons only to Mendham High School.
16 Transportation was to be provided. Individual
17 counseling services, weekly, was to be provided. If
18 you flip back to 12, I believe it's 12-20 at the
19 bottom, on "Modifications," even within those settings,
20 she was to be provided with extended time for tests and
21 quizzes. She would be allowed to meet with the school
22 counselors upon her request, so to have access to
23 counseling support, essentially, as needed, in addition
24 to those weekly individual counseling sessions that
25 were being provided; to allow her to have frequent

1 breaks and instruct teachers to provide her with
2 structure and interim due dates for long range
3 assignments -- having them broken down -- and providing
4 frequent feedback was recommended. So those were the
5 modifications, and as I said, the transportation was to
6 be provided, as well as the counseling support. This
7 IEP also has some accommodations listed from her
8 standardized assessments as well. That's on page 13-
9 20. You know, moving forward, since it was a wrap-
10 around IEP, it was to also take into account things she
11 might need for standardized testing, which included
12 frequent breaks, small testing groups, asking for
13 clarification, having extended time. And also, she was
14 also recommended to continue to receive the home
15 instruction in the morning as she begins to attend West
16 Morris Mendham, so she had a modified half-day schedule
17 for afternoons only. And then on the last -- one of
18 the last pages, 14-20, there is also some room built in
19 for an extension of the attendance policy due to the
20 chronic anxiety, depression, and panic attacks which
21 she's experiencing.

22 Q And where did -- where did those
23 modifications and that programming -- how is that
24 developed? What is that designed to address?

25 A Things that came out of the testing that had been

1 done previously or recommendations from the outside
2 providers, so, things like the counseling, due to the
3 school-related anxiety, extended time for some of the
4 scatter between the working memory. It all comes from
5 those reports and the background information that we
6 had gathered as part of the IEP team.

7 Q And at the IEP meeting that you attended, the
8 one in May --

9 A Yes.

10 Q -- do you recall, was the Being Successful
11 Program at Mendham High School discussed?

12 A Yes.

13 Q To your recollection, did the parents raise
14 any concerns about any academics?

15 A Yes. My recollection is the parents felt just
16 that it just wasn't the right fit for the particular
17 student and did have some concerns about how the
18 academics could be modified within that setting to her
19 levels.

20 Q Modified to a higher level or to a lower
21 level?

22 A To a higher level.

23 Q Did the parents raise any concerns about J.H.
24 having any academic challenges?

25 A I don't recall at that meeting.

1 Q So, was their concern that the BSP at Mendham
2 High School would be too challenging or be not
3 challenging enough?

4 A Possibly not challenging enough.

5 MS. HOWLETT: Just one moment, Your Honor. I
6 think we're done.

7 BY MS. HOWLETT:

8 Q And just to clarify, this IEP, the one that
9 we keep referring to that's P-26. It's marked -- it
10 looks like there's handwriting on it that says "Draft."
11 It is dated in April, correct, on that cover page? I
12 just want to make sure that everyone understands one
13 document.

14 A Yeah.

15 Q But your recollection, this is the document
16 that was presented at that May IEP meeting?

17 A Yes, it was presented at the May --

18 Q Despite the date.

19 A I'm not really sure. I think this was the draft
20 in the system, in the computer system. It was the open
21 draft, which is why it's dated that way.

22 BY THE COURT:

23 Q Let me ask a question. It wasn't changed
24 from when you -- from the first IEP meeting to the
25 second. Is that correct?

1 A I don't think -- I think there was an empty shell,
2 like a draft in the system from that date, the April
3 date, and that was what was added to it. I don't think
4 it had been presented.

5 Q The IEP that was presented at the -- at the
6 April meeting, it's this IEP that was -- that was
7 presented at the May date, correct?

8 A I wasn't at the meeting, the April --

9 Q You were at the May meeting.

10 A This was -- yes, this was the IEP presented at the
11 May meeting.

12 Q And is it the same as the one that was
13 presented at the April meeting?

14 A I don't think any IEP -- I don't -- I wasn't at
15 the April meeting, but I don't think any IEP was
16 presented. I think it was a discussion, from my
17 understanding, of that -- of that program. I don't
18 know if a document was --

19 Q So, as far as you know, this is the only one?

20 A Yes, as far as I know, it's the only one.

21 THE COURT: Anything else after I asked a
22 couple of questions?

23 MS. HOWLETT: No, thank you, Your Honor.

24 We're done with questions for the moment. Thank you.

25 THE COURT: Just one second while I write

1 myself a note.

2 Cross?

3 MS. WARSHAW: Your Honor, I have extensive
4 cross examination. Do you want me to start now or (out
5 of microphone range?)

6 THE COURT: I don't care. If you want to take
7 a break and go to lunch, that's fine with me. I'll
8 work through lunch. I don't -- it doesn't matter to
9 me. Do you want to take a break for lunch? I'm not
10 going to stop you, but I'm perfectly willing to work --
11 to work through lunch, if that's what you'd like to do.

12 MS. WARSHAW: We can take a break.

13 THE COURT: How long would you like? Taking a
14 break? Yea? Nay? You want a break?

15 UNIDENTIFIED MALE: If we could take five
16 minutes for a bathroom break?

17 MS. HOWLETT: Yeah, we're fine just with a
18 bathroom break and then plowing through, but --

19 THE COURT: That's fine. All right, I'm going
20 to be magnanimous.

21 (BRIEF RECESS)

22 THE COURT: We're back on the record on F.H.
23 and M.H. on behalf of J.H. vs. West Morris Regional
24 High School. The docket number is EDS 10706 and we are
25 ready for cross examination.

1 Proceed.

2 CROSS EXAMINATION BY MS. WARSHAW:

3 Q Ms. Dickerson, I'm going to refer you to
4 what's been marked R-16 and if you could please keep
5 your voice up so we could hear you, that would be
6 great.

7 A Okay.

8 Q Okay. You testified earlier that you did not
9 draft this report, that it was your replacement while
10 you were on maternity leave, Sherrie Wilke, who did it.
11 Is that correct?

12 A Yes, that's correct.

13 Q But you -- is it correct for me to say that
14 you reviewed it when you got back from maternity leave?

15 A Yes.

16 Q Okay. Were you aware that when this was --
17 this report was generated, that my client indicated
18 that there were errors in that report?

19 A I became aware at some -- I don't know when I
20 became aware of that, but I believe it was at the May
21 meeting. I do recall the parents saying that there had
22 been errors in -- they felt there were errors in the
23 report, yes.

24 Q Okay. And you're aware that none of those
25 corrections were made to that report, correct?

1 A I was not aware of that, that they were corrected.

2 Q Okay. So, isn't it true that the heading on
3 the report says "Clifton Public Schools" and this is,
4 presumably, West Morris Regional High School District?
5 Is that correct?

6 A Yes, yes.

7 Q And that error was never corrected, to your
8 knowledge?

9 A Not to my knowledge, no.

10 Q So, would it be your opinion that "Clifton
11 Public Schools" was an error, a typo?

12 A Yes.

13 Q And were you aware that my clients informed
14 Sherrie Wilke that, under "Background Information,"
15 that J.H. was never hospitalized?

16 A I'm not sure when I became aware of that, but
17 again, I believe, thinking of the May meeting, I
18 believe that I remember the parents saying that they
19 were concerned about that, yes.

20 Q Okay. But to your knowledge, that was never
21 corrected either in this report.

22 A Yes.

23 Q Yes, it was not corrected?

24 A It was -- to my knowledge, yeah, it was not
25 corrected.

1 Q Okay. And further down in that first
2 paragraph under "Background Information," the seventh
3 line down, were you aware that my clients had discussed
4 with Sherrie Wilke that J.H. was unable to return to
5 school; not that she refused to return to school?

6 A Yes. Again, I believe these concerns were brought
7 up at the May meeting, yes.

8 Q And to your knowledge, this characterization
9 was not corrected. Is that right?

10 A Yes.

11 Q Yes, it was not corrected?

12 A Yes, the report does not appear to have been
13 changed.

14 Q So, when you were taking this report into
15 consideration, did you take into consideration my
16 clients' objections to the characterizations set forth
17 in this report or the report itself?

18 A The questions that you're bringing up, I believe,
19 were at the May meeting, so I had read the report as
20 written. The IEP would have been proposed based on the
21 report that I had had.

22 Q And the IEP was written without my clients'
23 input. Is that correct?

24 A It was based on the information from -- that I had
25 been informed about from the April meeting, so I don't

1 --

2 Q So, my clients' were not present and did not
3 give you personal input when you drafted the IEP for
4 the -- for the May 2017 IEP meeting.

5 A Yes, that's correct.

6 Q I'm going to refer you to page four of this
7 report, the second paragraph under "Social Emotional
8 Functioning," the fourth line down. Again, were you
9 aware that my clients' disputed the words "school
10 avoidance" and it was actually her school anxiety?

11 THE COURT: Are you sure it's page four?

12 MS. WARSHAW: Well, that's what I -- oh, wait.
13 I'm sorry. Wait, wait. Hang on. Seven -- sorry. It
14 was hidden under my papers.

15 THE COURT: Page seven.

16 BY MS. WARSHAW:

17 Q Under "Social Emotional Functioning," second
18 paragraph down, fourth line, were you aware that my
19 clients' had indicated to Ms. Wilke that she did not --
20 that J.H. did not have school avoidance, but she had
21 school anxiety?

22 MS. HOWLETT: Your Honor, I'm not sure the
23 witness can testify as to conversations between the
24 parents and Ms. Wilke.

25 MS. WARSHAW: Your Honor, she testified that

1 she spoke to Ms. Wilke about what had gone on while she
2 was on maternity leave.

3 THE COURT: Why don't you ask --

4 MS. WARSHAW: I'm asking her if she had
5 knowledge of that.

6 THE COURT: Did you discuss that particular
7 section with Ms. Wilke?

8 THE WITNESS: Not that I recall.

9 THE COURT: Okay.

10 BY MS. WARSHAW:

11 Q Were you aware that my clients objected to
12 that characterization in this report of "school
13 avoidance" versus "school related anxiety?"

14 A I don't believe so, no.

15 Q Also, on the first line of that section,
16 "Social Emotional Functioning," it says, "According to
17 her hospital therapist." Are you -- you testified that
18 you are aware that J.H. was never in a hospital. Is
19 that correct?

20 THE COURT: I'm going to object. Asked and
21 answered. She said she was aware of it. She became
22 aware of it at the May meeting.

23 THE WITNESS: At the May meeting.

24 THE COURT: Per the parents.

25 BY MS. WARSHAW:

1 Q I'm going to refer you to the second to last
2 page in that report, under the section, "Critical Items
3 of Note." Did you ever have any --

4 A I'm sorry -- where?

5 Q The second to last page, the last line before
6 "Summary and Conclusion," --

7 A Okay.

8 Q -- where it says, "Sometimes threatens to
9 hurt others." Were you aware or did you have any
10 conversation with Ms. Wilke or anyone else that my
11 client indicated that that was completely false?

12 A I'm sorry. Can you repeat the question?

13 Q Okay. So -- all right. At the time that you
14 drafted the IEP for the May 2017 IEP meeting, were you
15 aware or did you have any prior conversations with
16 anyone to indicate that my clients felt that this never
17 occurred, where it says, "Sometimes threatens to hurt
18 others?"

19 MS. HOWLETT: Your Honor --

20 THE COURT: You've got to let her -- let her
21 ask the question.

22 Are you aware that -- I'll ask it in less
23 words. Are you aware that the parents dispute that
24 statement?

25 THE WITNESS: No, I wasn't aware specifically

1 about that item.

2 BY MS. WARSHAW:

3 Q I'm going to refer you to page four of that
4 same report. Did you feel it was significant that
5 J.H.'s working memory score was only in the 18th
6 percentile, in the low average range?

7 A I mean, it's typical when you do this type of
8 assessment to have some variability. It is a low
9 average range score. Sometimes students, in my
10 experience, that are suffering from anxiety and
11 depression and on medications, we do sometimes see a
12 little bit of a depressed score in that area. It's
13 telling about some of her -- the way she handles
14 various information, but we also had a lot of
15 information about her performance as a student as well.

16 Q And did you feel it was significant that her
17 processing speed was in the 34 (sic) percentile?

18 A That's an average -- an average score. Compared
19 to other students her age, a score of 94 is within the
20 average range.

21 Q Were you aware that -- strike that. Were you
22 concerned at all that J.H.'s score in the block design,
23 a score of nine, was in the low average range? Oh,
24 that's on the next page.

25 THE COURT: (Out of microphone range) on the

1 next page.

2 THE WITNESS: Well, the -- a score of nine
3 would typically be an average score. It's -- it's
4 slightly lower than the way she performed in the other
5 areas in that -- in that composite, but a score of nine
6 is an average score.

7 BY MS. WARSHAW:

8 Q Isn't a score of nine in the low average
9 range?

10 A It's on the lower end of the average range.

11 Q And isn't it true that J.H. --

12 A Ten would be the midpoint, so it's slightly below
13 the midpoint, but --

14 Q I'm sorry. I can't hear you.

15 A A score of 10 is the midpoint, so it's slightly
16 below the midpoint, but there's a standard deviation of
17 three, so anything typically between seven and 13 is an
18 average -- within an average score. So it's slightly
19 lower than the midpoint, but it's within the average
20 range.

21 Q And were you aware that J.H. scored in the
22 low average range for matrix reasoning and digital
23 puzzles?

24 A I'm sorry. Are we looking at the same thing?

25 THE COURT: Top of the page.

1 THE WITNESS: The top of --

2 MS. HOWLETT: It's marked "056" at the bottom.

3 THE WITNESS: Yeah.

4 THE COURT: At the top of the page, it's in a
5 block.

6 THE WITNESS: Yeah.

7 THE COURT: It says, "Block Design, Matrix."

8 THE WITNESS: I'm looking -- what I'm looking
9 at right now, the matrix reasoning, it says the scaled
10 score is 11 and the visual puzzles is 14, both of which
11 are -- 11 is within the average range; the visual
12 puzzles is just on the cusp of the high average range.

13 BY MS. WARSHAW:

14 Q And were you aware that J.H. scored -- were
15 you concerned about J.H. scoring in the low average
16 range for digit span and arithmetic?

17 A A score -- again, a score of nine, the arithmetic
18 score, again, that's within the average range on this
19 particular assessment on that day that she was tested,
20 according to the report by Ms. Wilke. But a nine is --
21 again, a 10 would be the midpoint and there -- it would
22 be just within -- within the average range. The digit
23 span score is in the lower -- low average range.

24 Q And would you say that J.H.'s score in the
25 symbol search of five was in the low average range?

1 A Yes.

2 Q And did any of those concern you?

3 A Yes. I mean, there is variability, again, with
4 these scores. I mean, it would be typical to have some
5 variability. Those scores are within the low average
6 range and (out of microphone range.) I'd have to go
7 back to the body of her report.

8 Q And isn't it true that J.H. performed in the
9 high average range for verbal reasoning abilities?

10 THE COURT: You changed pages?

11 MS. WARSHAW: No, that's on the same page --
12 the bottom -- the bottom paragraph.

13 THE COURT: Oh, I'm sorry. Thank you.

14 THE WITNESS: Yes, the verbal comprehension
15 index, she scored a 116, which is within the high
16 average range.

17 BY MS. WARSHAW:

18 Q Okay. Turning to the next page, third
19 paragraph down, starting with the fifth line of the
20 third paragraph down, the third full paragraph. It
21 says, "A weakness in mental control." Can you read
22 that, please?

23 A "The student's abilities to sustain attention,
24 concentrate, and exert mental control are a weakness
25 relative to her non-verbal and reasoning abilities."

1 Q And the next line? The next line -- "A
2 weakness."

3 A "A weakness in -- a weakness in mental control may
4 make the processing of complex information more time
5 consuming for J.H., draining her mental energies more
6 quickly, as compared to others at her level of ability
7 and perhaps result in more frequent errors on a variety
8 of learning or complex work tasks."

9 Q Did those statements concern you with regard
10 to J.H.?

11 A Yes. And again, sometimes it's not uncommon for a
12 student who is experiencing anxiety to have some
13 difficulties concentrating. It's not uncommon for us
14 to see that area slightly depressed sometimes.

15 Q Was any further testing done by the school
16 district with regard to these scores?

17 A No, not to my knowledge. And part of that, I
18 believe it's also --

19 THE COURT: There's no question.

20 MS. WARSHAW: There's no question.

21 THE WITNESS: Oh, I'm sorry.

22 BY MS. WARSHAW:

23 Q I'm going to refer you to P-26 in the blue
24 binder. In P-26, there are actually two IEPs here. Is
25 that correct? One has one through 22 and the other one

1 has one through 20 -- the pages -- or do you just have
2 the one through 20? I have both.

3 A I have two pages -- like, a cover page and a sign-
4 in -- sign-in page, and then I have a whole -- the IEP.

5 Q Okay. All right. So, I'm going to ask you
6 about these two cover pages.

7 THE COURT: Wait a minute. I don't think I
8 have two cover pages on P-26.

9 MS. WARSHAW: Do you have the first --

10 THE COURT: I do, yes.

11 MS. WARSHAW: Okay.

12 THE COURT: It's like the third page?

13 MS. WARSHAW: Correct. The first two pages
14 say --

15 THE COURT: Okay.

16 MS. WARSHAW: -- one through 22 and it says
17 "Draft" on it.

18 THE COURT: Right, and you got one --

19 MS. WARSHAW: And then it says --

20 THE COURT: Okay. Thank you.

21 MS. WARSHAW: The next one says "one through
22 20." Okay, that's what the confusion was, because I
23 have both in my --

24 THE COURT: It's in there. It's in the
25 binder. Okay.

1 MS. WARSHAW: Okay, great.

2 THE COURT: Thank you.

3 BY MS. WARSHAW:

4 Q Okay. So, going to the first page of the P-
5 26, can you tell us what the first two pages are? And
6 they're labeled -- the first page says "1 out of 22"
7 and the second page says "2 out of 22."

8 A This is a typical cover page for an IEP, the first
9 page.

10 Q And who's listed as the case manager?

11 A Myself, Kendra Dickerson.

12 Q On both pages?

13 A Yes.

14 Q And the date of the IEP meeting on those two
15 pages is what?

16 A 4/6/2017.

17 Q And is the word "Handwritten Draft" on the
18 first page?

19 A Yes.

20 Q Okay. I'm going to refer you to the third
21 page in the exhibit, which is -- it says, "1/20." Who
22 is listed as the case manager on that?

23 A Sherrie Wilke.

24 Q Okay. And what is the date of the IEP
25 meeting?

1 A 4/6.

2 Q Okay. And the next page, who is listed as
3 the case manager?

4 A Sherrie Wilke.

5 Q And does this IEP have anything that says
6 "Draft" on it, on that front page?

7 A No.

8 Q Okay. So is it fair to say that the IEP that
9 does not have the word "Draft" on it was the IEP
10 presented at the April 6th, 2017 meeting where Sherrie
11 Wilke was the replacement school psychologist?

12 MS. HOWLETT: Your Honor, the witness
13 testified she wasn't present at the April meeting.

14 THE COURT: I think --

15 MS. HOWLETT: And she also testified that she
16 wasn't sure that an IEP was presented at that meeting.

17 THE COURT: I'm going to let her go with this
18 because I want to know.

19 Go ahead. Answer the question, if you know.
20 If you don't know, you don't know.

21 THE WITNESS: I don't know.

22 BY MS. WARSHAW:

23 Q Okay. But this -- the IEP that you had
24 drafted for the May 2017 IEP meeting, the only
25 difference was these two pages. Is that correct?

1 A No. To my knowledge, an IEP was not presented at
2 the -- at the April 6th meeting, so the IEP that's here
3 would be the one that was at the May meeting, to my
4 knowledge.

5 Q What I'm asking you is, when you drafted the
6 IEP, the only change that you made was changing the
7 case manager and writing "Draft" on it. Is that
8 correct?

9 A No. All of the information had to be inputted
10 into the system and the IEP had to be written out.

11 Q Okay. So it's your testimony that at the
12 April 2017 IEP meeting, no IEP was provided to my
13 clients?

14 A Not to my knowledge, no.

15 THE COURT: I'm going to ask a question, if
16 you don't mind.

17 The IEP we're looking at -- setting aside the
18 two different cover pages and (out of microphone range)
19 pages -- the actual IEP draft itself, you inputted all
20 this information?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 Go ahead.

24 MS. WARSHAW: Okay.

25 BY MS. WARSHAW:

1 Q I'm going to refer you to page --

2 MS. WARSHAW: Sorry, Your Honor. I need to
3 find it.

4 BY MS. WARSHAW:

5 Q I'm going to refer you to page five of 20.
6 On the bottom, where it says "Grade Eleven," some of
7 those courses have "BSP" listed next to them. Is that
8 correct?

9 A Yes.

10 Q Okay. And others do not.

11 A Yes.

12 Q Is it your understanding that the courses
13 that do not have "BSP" listed, that J.H. would take
14 those classes in general education classes?

15 A Yes, yes.

16 Q So she would have to navigate through the
17 Mendham High School to get to a general ed class for
18 French III, Algebra II, Phys Ed, Health, Band? Is that
19 correct?

20 A My knowledge is that I believe those courses --
21 French III -- were not offered within the BSP, so they
22 could either take it with the mainstream setting or an
23 Educere. Sometimes, Educere is delivered to the
24 classroom.

25 THE COURT: That wasn't -- that wasn't the

1 question.

2 THE WITNESS: Oh, I'm --

3 THE COURT: The question was, did she have to
4 navigate through the school to get to these classrooms?

5 THE WITNESS: Yes.

6 THE COURT: Okay.

7 BY MS. WARSHAW:

8 Q And I'm going to refer you to page eight out
9 of 20. The first paragraph, it says -- well, I'm going
10 to use "J.H." -- "J.H. will continue to take courses at
11 college-prep level in order to work towards completion
12 of graduation." That's not advanced level classes,
13 correct? That's college-prep classes.

14 A It could be academic or above, yeah. It could be
15 advanced as well.

16 Q It could be what? I'm sorry. I didn't hear
17 you.

18 A Advanced, as well.

19 Q But college-prep level, it says, so is that a
20 different level than advanced classes?

21 A College-prep level is considered anything academic
22 level or above, so advanced, honors -- it could all be
23 considered college-prep.

24 Q Okay. And were you aware when you inputted
25 all this information for this IEP that J.H. was going

1 to be placed in the Behavioral Support Program at
2 Mendham High School, as stated in this IEP?

3 A The BSP program, yes. Yes, at Mendham.

4 Q The Behavioral Support Program at Mendham
5 High School.

6 A At Mendham, yes.

7 Q And you were aware at the time that it was
8 called the Behavioral Support Program?

9 A To my -- to my knowledge, they were both called
10 BSP, both at Central and at Mendham. At the time, it
11 was my understanding that it was called the Behavioral
12 Support Program, but it -- yes, the IEP was for the
13 Mendham High School program.

14 Q To your knowledge, did there come a time when
15 there were independent evaluations done for J.H.?

16 A Yes.

17 Q Okay. And do you recall what those were?

18 A I believe that resulted from the May meeting and I
19 think it was a psychoeducational report and a
20 psychiatric report.

21 Q And do you recall when you received the
22 actual psychoeducational report?

23 MS. HOWLETT: Your Honor, we're going to
24 object to anything that happened after the -- this is
25 the subject of our motion to exclude, so I just want to

1 -- I understand Your Honor's position earlier, but I
2 want to, for the purpose of the record --

3 THE COURT: Objection, is noted.

4 MS. HOWLETT: Thank you.

5 THE COURT: I'm going to allow it and I have
6 to decide a motion --

7 MS. HOWLETT: Thank you, Your Honor.

8 THE COURT: -- and unfortunately, my daughter
9 got married. Well, fortunately, my daughter got
10 married. I shouldn't say "unfortunately."

11 MS. HOWLETT: Just for the purposes of the
12 record, I understand you're going to allow it.

13 THE COURT: I was out most of the last week,
14 so -- okay. Proceed.

15 MS. WARSHAW: I'm sorry. I don't remember my
16 question.

17 BY MS. WARSHAW:

18 Q When did you receive the independent
19 psychoeducational report?

20 A I don't recall exactly when it was received, but I
21 believe it's on the document. It was faxed over.

22 Q Okay. I'm going to refer you to what's been
23 marked P-32 in the blue binder, starting with the
24 second page. Do you recognize this document?

25 A Yes.

1 Q Okay. And isn't it true that the date of
2 this report is August 17th, 2017 -- I'm sorry -- August
3 21st, 2017?

4 MS. HOWLETT: Your Honor, the date speaks for
5 itself.

6 THE COURT: That's all right.

7 THE WITNESS: The report is dated August 21st,
8 2017.

9 (P-32 Marked for
10 Identification)

11 BY MS. WARSHAW:

12 Q So is it fair to say that you received a copy
13 of this report in August of 2017?

14 A August or when I returned in September.

15 Q Okay.

16 A This was the end of the month.

17 Q Is it fair to say that this report was
18 available to the school district and to my clients
19 prior to the start of school for the 2017/2018 school
20 year?

21 A I don't know when it -- I don't know when it was
22 received.

23 Q Are you aware that -- that Dr. Schubert
24 (phonetic) diagnosed J.H. with a specific learning
25 disability in this report?

1 A Yes, I've read it in this report.

2 Q And is it fair to say that, following receipt
3 of this report, the school district did not schedule
4 any type of IEP meeting?

5 A To my knowledge, no, they did not.

6 Q Is it fair to say that, following receipt of
7 this report and the diagnosis of specific learning
8 disability, that the school district did not amend the
9 IEP?

10 A That's correct.

11 Q Is it fair to say that the school district,
12 after receipt of this report of specific learning
13 disability, did not consider changing J.H.'s proposed
14 IEP or classification?

15 A That's correct.

16 Q I'm going to refer you to what's been marked
17 P-33 for identification. Have you seen this report
18 before?

19 A Yes.

20 Q Okay. Isn't it true this is the independent
21 psychiatric report by Dr. Ellen Platt?

22 A Yes.

23 (P-33 Marked for
24 Identification)

25 Q Okay. And it's dated September 6th, 2017. Is

1 that correct?

2 A Yes.

3 THE COURT: Your objection is noted, Ms.

4 Howlett.

5 MS. HOWLETT: Thank you, Your Honor.

6 BY MS. WARSHAW:

7 Q And isn't it true that you had correspondence
8 with my clients, via e-mail, regarding obtaining a copy
9 of this report in August of 2017?

10 A I don't recall specifically.

11 Q Okay. And if you look at the bottom of the
12 page -- it's upside down -- but isn't it true that
13 there is a fax date of September 14th, 2017?

14 A Yes.

15 Q And were you -- did you read this report?

16 A Yes.

17 Q Okay. And isn't it true that on page 11 of
18 this report, the top paragraph, it indicates that,
19 "J.H. remains exceedingly emotionally fragile and the
20 probability of her attending her school is extremely
21 low at this time?"

22 A Yes.

23 Q And isn't it true that, following receipt of
24 this report, the school district did not schedule an
25 IEP meeting to amend the IEP?

1 A Not to my knowledge, no.

2 Q And isn't it true that the school district
3 did not take this report into consideration in
4 determining an appropriate classification or placement
5 of J.H.?

6 A Yes.

7 Q Yes? Can you clarify what that means?

8 THE COURT: She answered "Yes" to your
9 question.

10 BY MS. WARSHAW:

11 Q Is it -- is it true that --

12 THE COURT: They did not take it into
13 consideration.

14 BY MS. WARSHAW:

15 Q Okay. They did not take into consideration.

16 A Yes.

17 Q Okay. So is it fair to say that the District
18 paid for two independent evaluations and they did not
19 take either one into consideration when deciding what
20 would be appropriate for J.H. for her placement for the
21 2017/2018 school year?

22 A Yes.

23 Q I'm going to refer you to what's been marked
24 P-29 in the blue binder. Can you tell the Court what
25 this is, the first page?

1 A It's an e-mail from -- from the parent regarding
2 those reports.

3 (P-29 Marked for
4 Identification)

5 Q And what's the date of this e-mail?

6 | A Friday, August 25th, 2017.

7 Q And isn't it true that this e-mail is from my
8 client to you --

9	A	Yes.
---	---	------

10 Q -- requesting -- requesting the results of
11 Dr. Schubert's independent psychoeducational evaluation
12 report?

13	A	Yes.
----	---	------

14 Q And isn't it true that my client is
15 requesting, on August 25th, 2017, prior to the 2017/18
16 school year starting, to call her "as school is almost
17 here and we need to discuss what is best for J.H.?"

18	A	Yes.
----	---	------

19 Q And then, the last -- isn't it true that this
20 e-mail also states, from my client to you, that she
21 would call you again to try to contact you that morning
22 because they would like to make a decision as soon as
23 possible?

24	A	Yes.
----	---	------

25 Q And did you understand that that decision was

1 whether or not J.H. was going to attend school in the
2 district?

3 A I'm sorry. Can you repeat that?

4 Q Did you understand that that e-mail was
5 regarding whether or not my clients were going to send
6 J.H. to the school district for the 2017/2018 school
7 year?

8 MS. HOWLETT: Your Honor, that's completely
9 speculative.

10 MS. WARSHAW: Well, I'm asking her
11 understanding of what this e-mail was.

12 MS. HOWLETT: She's asking the witness to
13 speculate as to what the intention of the parent was
14 when she sent the e-mail.

15 MS. WARSHAW: No, I'm asking her what her
16 understanding of -- as to what my client said to her.

17 MS. HOWLETT: The e-mail speaks for itself.

18 THE COURT: Yeah, the e-mail does speak for --
19 it's clear to me, the parent wants to have a
20 conversation about the report, so --

21 MS. WARSHAW: Okay. Thank you.

22 THE COURT: -- that's what it says. We don't
23 need to go further than that. I got it.

24 MS. WARSHAW: Okay.

25 BY MS. WARSHAW:

1 Q I'm going to refer you to the next page. Can
2 you tell us what the first e-mail is and who -- who got
3 a copy of that?

4 A The first e-mail is directed to Mr. Cusack, the
5 guidance counselor. It's from the student's parents.
6 I was cc'd on that, so I would have seen the e-mail as
7 well.

8 Q Can you speak up? I'm sorry; it's hard to
9 hear you.

10 A I'm sorry. So, the first e-mail is an e-mail to
11 the student's guidance counselor from her parents and I
12 was cc'd on that, so I would have seen it as well.

13 Q Okay. And what's the date of that e-mail?

14 A Friday, September 8th, 2017.

15 Q Okay. And that's prior to the school
16 district starting school or is that the day the school
17 district started for 2017/2018 school year?

18 A I believe it was about a week in. I believe we
19 started on August 28th.

20 Q Okay. And can you read what that says?

21 A The e-mail?

22 Q Yes.

23 A "Hi, Joe. In the phone conversation I had with
24 you and Kendra back on August 25th, you indicated that
25 J.H. would be coming back to West Morris as a general

1 education student with a 504. We were confused at the
2 time, since she was already determined to be eligible
3 for special services with the previously proposed IEP.
4 Since then, I have spoken to Kendra and she indicated
5 that the team is waiting for the results from Dr.
6 Platt's office to schedule a new IEP. Can you please
7 supply us with the proposed plan for J.H. in writing?
8 Thank you. Regards."

9 Q So is it your understanding that my clients
10 were still trying to schedule a new IEP based on the
11 independent evaluation results?

12 THE COURT: Let me answer. Of course they
13 were. That's what it said.

14 MS. WARSHAW: I want her understanding of
15 that. It's important because, obviously, there's a
16 miscommunication.

17 THE COURT: There seems to be.

18 MS. WARSHAW: So I'd like --

19 THE COURT: Answer the question.

20 MS. WARSHAW: -- to make sure her (out of
21 microphone range.)

22 THE COURT: You know what? You convinced me
23 to be quiet.

24 Go ahead. Answer the question.

25 THE WITNESS: My understanding at the time was

1 they hadn't agreed to the initial IEP, so she still
2 would have been considered a general education student
3 with the previously proposed 504 plan at that time --
4 yeah.

5 BY MS. WARSHAW:

6 Q And was it your understanding that my client
7 was requesting a new IEP?

8 A Yes.

9 MS. HOWLETT: Your Honor, that's not -- that's
10 not what the e-mail says.

11 THE COURT: Well, it's --

12 THE WITNESS: I think they were asking for the
13 504.

14 THE COURT: When there's an objection and the
15 lawyers are talking, you really shouldn't be answering
16 anything because I have to decide whether I'm going to
17 let you.

18 MS. HOWLETT: Your Honor, the e-mail speaks
19 for itself and the parent is not requesting --

20 THE COURT: Yeah. The e-mail says --

21 MS. HOWLETT: We're speculating.

22 THE COURT: Okay. Well, we're not
23 speculating. They asked for a new IEP -- to schedule a
24 new IEP.

25 MS. HOWLETT: They --

1 THE COURT: That's what it says.

2 MS. HOWLETT: No, that's not. It says, "She
3 indicated," which means Kendra, "indicated that the
4 team is waiting for results from Dr. Platt's office to
5 schedule a new IEP." But there's a pretty important
6 distinction there --

7 THE COURT: There is.

8 MS. HOWLETT: -- between requesting an IEP
9 meeting and summarizing a previous conversation with
10 Ms. Dickerson.

11 THE COURT: Okay. And the question asked was?

12 MS. WARSHAW: Was her understanding that my
13 clients were requesting a new IEP, based on the fact
14 that there were independent evaluations?

15 THE COURT: You can answer that. I'll allow
16 that. Yes or no?

17 THE WITNESS: I don't -- I don't really --

18 THE COURT: You don't know?

19 THE WITNESS: I'm sorry. I just -- I'm having
20 a hard time understanding the --

21 THE COURT: Yeah, I agree.

22 THE WITNESS: Because there's a couple
23 different things involved here.

24 THE COURT: I'm going to boil it down. If I
25 misstate it, stop me.

1 MS. WARSHAW: Okay.

2 THE COURT: The question is, was it your
3 understanding that the parents were requesting a new
4 IEP?

5 THE WITNESS: From this e-mail?

6 THE COURT: From this e-mail.

7 THE WITNESS: It was my understand they were
8 looking for copies of either the 504 plan or the
9 proposed IEP.

10 THE COURT: Okay.

11 THE WITNESS: And my understanding at the time
12 was that we were under -- we were working with legal
13 counsel, so the next IEP meeting would be scheduled
14 through the attorneys.

15 THE COURT: Okay.

16 THE WITNESS: That was my understanding.

17 THE COURT: That's your answer.

18 BY MS. WARSHAW:

19 Q And just to be clear, there was no other IEP
20 meeting that was ever scheduled for J.H. Is that
21 correct?

22 A Not to my knowledge, no.

23 Q I'm going to refer you back to R-16, what's
24 been marked "WM058" -- that page.

25 THE COURT: I'm sorry, Ms. Warshaw -- WM0 --

1 MS. WARSHAW: Five eight.

2 THE COURT: Thank you.

3 THE WITNESS: Where?

4 MS. WARSHAW: The black binder.

5 THE WITNESS: The other binder? Sorry.

6 MS. WARSHAW: Sorry. It's a little confusing.

7 THE WITNESS: I'm sorry. What --

8 MS. HOWLETT: Tab 16.

9 THE COURT: Ms. Wilke's report.

10 THE WITNESS: Okay.

11 THE COURT: Turn to the page that's marked
12 "WM058" and (out of microphone range.)

13 THE WITNESS: Okay.

14 BY MS. WARSHAW:

15 Q This report refers to the B-A-S-C-2, the
16 BASC. Isn't it true that this is a subjective test and
17 it's subject to interpretation?

18 A It is a standardized questionnaire, so there are
19 scores that correlate with -- with specific categories.

20 Q But these questionnaires are answered by
21 individuals and not based on what the choices are
22 provided -- is that correct -- in the test?

23 A It's a questionnaire that's filled out by -- in
24 this case, it was the parents and the student.

25 Q Okay. So their responses are subjective,

1 based on their own positions, correct?

2 A Yes, their perspective, yes.

3 Q And were you aware that J.H. was in the

4 school at the time that she was taking this test?

5 THE COURT: In the school physically or

6 attending the school?

7 BY MS. WARSHAW:

8 Q Physically -- physically in the school.

9 A Physically came in for the assessment.

10 Q And were you aware that, that day, that she

11 was experiencing anxiety as a result of being in that

12 school that day?

13 A I wasn't present.

14 Q Can anxiety affect the answers on the BASC-2?

15 A Yes.

16 Q Do you know when the name changed at the

17 Mendham High School from Behavioral Support Program to

18 Being Successful Program?

19 A I don't know when exactly it changed. I don't

20 know.

21 Q You had indicated that the reward system was

22 stronger at the Mendham High School Behavioral Support

23 Program. Is that correct?

24 A Yes.

25 Q So, is it true that students would get points

1 for showing up and staying awake in class?

2 A I would need to refer to the document, but there
3 is, yes, set criteria. I know attendance is part of
4 that, yes.

5 Q And to your knowledge, did J.H. have any
6 disciplinary issues?

7 A Not to my knowledge.

8 Q And you were at the meeting, the May 16th,
9 2017 IEP meeting where Dr. David Leigh attended. Is
10 that correct?

11 A Yes.

12 Q Okay. Were you aware that he indicated that
13 the Purnell School was a good option for J.H. to look
14 at?

15 A As I -- as I recall, I think he said that out of
16 some of the ones that you had -- you had mentioned --
17 you were present and mentioned several placements. I
18 believe he said it was something to consider.

19 MS. WARSHAW: Can I have a moment, please,
20 Your Honor?

21 THE COURT: Sure.

22 MS. WARSHAW: I think we're done. Thank you.

23 THE COURT: Okay.

24 Do you have any redirect?

25 MS. HOWLETT: I do, Your Honor. I'll try --

Colloquy / Dickerson - Redirect 199

1 THE COURT: We're going to take -- I need five
2 minutes.

3 MS. HOWLETT: Sure, Your Honor.

4 THE COURT: Okay?

5 MS. HOWLETT: Yes.

6 THE COURT: I need -- just so you know -- I
7 need to go check my blood sugar. I don't want to pass
8 out on the bench.

9 (BRIEF RECESS)

10 THE COURT: Okay, we're back on the record
11 after a brief break. We're about to start redirect,
12 correct?

13 MS. HOWLETT: Yes, Your Honor. I will, again,
14 try and be brief.

15 REDIRECT EXAMINATION BY MS. HOWLETT:

16 Q Ms. Dickerson, counsel asked you,
17 extensively, questions about Ms. Wilke's report. Did
18 you, in addition to Ms. Wilke's report, did you also
19 review the correspondence that came directly from
20 ICCPC?

21 A Yes.

22 Q And that documentation, did it talk about the
23 or at least refer to the partial care program that she
24 was -- that she had attended -- that J.H. had attended?

25 A Yes.

1 Q To your knowledge, had the parents submitted
2 any written objection to Ms. Wilke's report?

3 A Not to my knowledge.

4 Q Did you receive anything from the parents in
5 writing, requesting that an amendment be made to the
6 report?

7 A That was discussed at the May meeting. I remember
8 a discussion. I didn't see any formalized document for
9 that, no.

10 Q So did you receive anything in writing?

11 A No.

12 Q And to your knowledge, has anyone at the
13 district received any such writing from the parents?

14 A No. Not to my knowledge, no.

15 Q Counsel asked you about subtests on the -- in
16 Ms. Wilke's report. Can you just tell us, generally,
17 how do you consider subtests when you're reviewing, you
18 know, a psychological assessment or when you conduct a
19 psychological assessment?

20 A Subtests are individual, brief -- brief tasks that
21 a student -- that a student does. They measure very
22 specific things, and in most cases, two or three
23 subtests are required to get a composite score, to look
24 at a particular area.

25 Q So, when you reviewed Ms. Wilke's report,

1 were the results -- were J.H.'s results on the subtests
2 a red flag to you?

3 A There was one with a score of five that was a bit
4 of a red flag. I'd have to -- could I refer to that
5 one? I mean, that would be --

6 Q You can. I mean, I'm really asking you
7 generally about -- about the subtests and what your
8 impression was on the report.

9 A Uh huh.

10 Q You know, more than revisiting it.

11 A Yeah, typically, there is some variability amongst
12 a report. It's not uncommon to see some variations.
13 (Out of microphone range) is slightly different. Most
14 of those scores were within the average to above
15 average range, with a few that were a little bit on the
16 lower end, and then that one particular low score.

17 Q So, generally, would a single low subtest be
18 cause for concern?

19 A Not usually, no.

20 Q Going to the IEP and the proposed program and
21 the modifications and accommodations -- everything
22 that's incorporated within that -- the related
23 services, were there -- was there anything in the IEP
24 that was an attempt to address concerns related to
25 J.H.'s potential difficulty concentrating or attention

1 issues that might have been related to her anxiety?

2 A Yeah. I mean, the program in general is a smaller
3 class setting. Things like frequent breaks, things
4 like extended time, options to see, you know,
5 counselors -- access -- all of that is to help address
6 the issues of anxiety.

7 Q Counsel asked you questions about the
8 proposed course offerings and I believe you testified
9 that the -- I don't have the courses in front of me,
10 but that some of the -- I think it was French, maybe
11 Algebra, were offered in a general education setting.
12 Is that -- was that your testimony?

13 A Yes, yes.

14 Q You also mentioned -- you also testified that
15 in addition to the general education setting, a student
16 could be provided with Educere. Is that --

17 A Yes.

18 Q And what is Educere, just for the record?

19 A Educere is an online delivery system for courses
20 that can be brought to the BSP room if a student is
21 feeling anxiety in a larger class setting. They can do
22 it online with assistance in the BSP classroom.

23 Q So if a student is receiving certain
24 coursework via Educere, they wouldn't necessarily have
25 to navigate through the high school.

1 A Yes.

2 THE COURT: Can you spell Educere?

3 MS. WARSHAW: E-D-I-C-E-R-E.

4 THE COURT: A little louder.

5 MS. WARSHAW: E-D-I-C-E-R-E.

6 MS. HOWLETT: E-D-U --

7 UNIDENTIFIED MALE: E-D-U-C-E-R-E.

8 THE WITNESS: Yeah.

9 THE COURT: E-D-U --

10 UNIDENTIFIED MALE: C-E-R-E.

11 MS. WARSHAW: C-E-R-E.

12 MS. HOWLETT: C-E-R-E.

13 THE COURT: Thank you. Go ahead.

14 BY MS. HOWLETT:

15 Q I am going to turn your attention -- it's the
16 blue binder. It's P-32. It's Dr. Schubert's report
17 and correspondence. Can you just turn to the first
18 page of --

19 A I'm sorry. What number?

20 Q P-32. And you're in blue, right?

21 A Yes.

22 Q Yeah. Did you review this letter from Dr.
23 Schubert that's dated December 13th? It's the first
24 page of the exhibit.

25 A Yes.

1 Q And she says, "The evaluation concluded."

2 Can you just -- well, you don't have to read all, like,
3 the -- but can you summarize what she was concluding?

4 A She was concluding that J.H. meets the diagnostic
5 criteria within the DSM-IV for a specific learning
6 disorder with impairment in mathematics, specifically,
7 with fluent calculation, moderate.

8 Q Does a DSM diagnosis always result in a
9 classification for special education?

10 A No.

11 Q Can you have a diagnosis without meeting the
12 criteria for special education under the Code?

13 A Yes.

14 Q Did you have Dr. Schubert's report when you
15 proposed the -- when you proposed the IEP at the May
16 IEP meeting?

17 A No.

18 Q To your knowledge, is the District permitted
19 to implement an initial IEP without parental consent?

20 A No.

21 Q I'm just going to turn you to P-29. That was
22 the e-mail correspondence that counsel referred you to
23 earlier.

24 A Twenty-nine?

25 Q Yeah, it's exhibit 29, but I think it's the

1 second page.

2 THE COURT: The blue binder?

3 MS. HOWLETT: Yes, Your Honor, same binder.

4 BY MS. HOWLETT:

5 Q This is the e-mail you guys talked about
6 before that we kind of disputed. Do you recall looking
7 at this?

8 A Yes.

9 Q Okay. Just bringing you back. Counsel asked
10 you and had read portions of the parents' e-mail at the
11 top. Can you please read the first line of Mr.
12 Cusack's response? I believe it's right below.

13 A Yes. Mr. Cusack wrote, "Hello, Mr. and Mrs. H. I
14 am not sure if you were referring to the proposed IEP
15 or the 504 plan. If you need a copy of any IEP
16 proposal, Kendra would have that documentation. I have
17 attached a copy of the 504 plan that we developed last
18 December when J.H. was returning to school. This plan
19 would still be in effect for the 2017/18 school year
20 here at West Morris Central."

21 Q That's good. Thank you. And did the parent
22 respond? Does it appear that the parent responded to
23 that?

24 A Yes, the chain just continues. "Hi, Joe. Thank
25 you for the information. Regards."

1 Q And in that e-mail from the parent, did --
2 did she request an IEP meeting?

3 A Not in this e-mail, to my knowledge.

4 Q Counsel asked you questions about what
5 transpired at the May IEP meeting.

6 A Uh huh.

7 Q Specifically, some things that Dr. Leigh had
8 referred to.

9 A Uh huh.

10 Q To your recollection, at the meeting, did Dr.
11 Leigh discuss the BSP program at Mendham?

12 A Yes.

13 Q Was it spoken about at length?

14 A Yes.

15 Q Is the director of special services a member
16 of the child study team?

17 A Not -- no, not usually.

18 MS. HOWLETT: Your Honor, that's all the
19 questions I have.

20 MS. WARSHAW: Of course.

21 THE COURT: The record doesn't reflect I just
22 stared at Ms. Warshaw and she's smiling.

23 Go ahead. Recross.

24 RECROSS EXAMINATION BY MS. WARSHAW:

25 Q I'm going to refer you back to P-29, on the

1 e-mail from Mr. Cusack to my clients, dated September
2 11th, 2017. It's the second page of that exhibit. Were
3 you aware that the -- that Mr. Cusack indicated that a
4 504 plan is typically in effect for only one year at a
5 time?

6 A I'm sorry, can --

7 MS. HOWLETT: Your Honor --

8 THE COURT: She wasn't here.

9 MS. WARSHAW: Okay. I'll rephrase it.

10 BY MS. WARSHAW:

11 Q Are you aware that 504 plans are typically
12 only in effect for one year at a time?

13 MS. HOWLETT: Your Honor, is this related to
14 redirect?

15 THE COURT: I don't think so. It's regarding
16 the --

17 MS. WARSHAW: You just asked --

18 THE COURT: At least, ostensibly, it's related
19 to the e-mail that Cusack sent.

20 MS. WARSHAW: Well, she just read it into --
21 and --

22 THE COURT: Yeah, I get that, but the -- I get
23 it.

24 The question is, are you -- okay -- are you
25 aware that a 504 plan is usually just for one year?

1 THE WITNESS: It's usually updated yearly, but
2 it's not -- it can be up to three years.

3 THE COURT: Okay. There's your answer.

4 BY MS. WARSHAW:

5 Q And were you aware that the 504 plan that was
6 issued in December of 2016 was going to be the same 504
7 plan in effect for the 2017/2018 school year without
8 any modifications or updates?

9 MS. HOWLETT: Your Honor, now we're definitely
10 off of the scope.

11 THE COURT: Yeah, we're off the scope.

12 MS. WARSHAW: Well, she was reading this in
13 and I think this is important to distinguish the
14 difference.

15 THE COURT: Well, you asked her if that was
16 the plan that was going to be in effect for the
17 following school year.

18 MS. WARSHAW: I didn't get an answer from that
19 one.

20 THE COURT: Well, that's because you got an
21 objection. I'm not going to have her answer.

22 BY MS. WARSHAW:

23 Q What is the typical procedure for reviewing -
24 - I'm sorry. What is the typical procedure for the
25 child study team once they receive new information

1 about a student?

2 A I'm sorry. I don't really understand your
3 question.

4 Q Okay. Once an IEP is proposed and new
5 information such as independent evaluations are done
6 and they say something different, what is the procedure
7 for the school district, typically, to address those
8 changes?

9 A It -- there wasn't a typical procedure. My
10 understanding was that there was already legal counsel,
11 so it wouldn't -- that would be -- I'm not -- I'm
12 honestly not sure.

13 THE COURT: You're not sure because counsel
14 was involved or you're not sure as a general -- as a
15 general statement?

16 THE WITNESS: I mean, it depends on the
17 results of the assessments and if they -- I guess I
18 just -- I'm not really sure what would have been the
19 next -- I don't know.

20 BY MS. WARSHAW:

21 Q At the May 2017 IEP meeting which you
22 attended, you just testified that you talked about
23 Educere. Isn't it true that Dr. David Leigh had
24 indicated that J.H. could take gym class, like
25 volleyball rules and stuff, online?

1 A Yes.

2 Q Isn't it true that in the Behavioral Support
3 Program at the Mendham High School, J.H. would not be
4 able to have science labs or anything like that? She
5 would have to go to the general education classes to do
6 that.

7 A I believe she was involved with physics. I would
8 have to -- I would have to look. I think that was one
9 of the courses she was doing on Educere, and if she
10 wanted to join that, at that time of the year, it would
11 have been within a mainstream setting or to continue on
12 Educere. Environmental Science was offered within the
13 BSP program.

14 Q She wasn't taking environmental science. Is
15 that correct?

16 THE COURT: That wasn't the question. The
17 question was, if she had to take a lab --

18 THE WITNESS: A lab, yes.

19 THE COURT: -- would she have to do that in
20 the classroom?

21 THE WITNESS: I believe a lab would have to be
22 on Educere or in a classroom.

23 BY MS. WARSHAW:

24 Q A general education classroom. Is that
25 correct?

1 A Yes.

2 MS. WARSHAW: Your Honor, at this time, I'd
3 just like to enter the evidence that we have been
4 discussing.

5 THE COURT: Sure.

6 MS. WARSHAW: Okay.

7 THE COURT: Let's go through them.

8 MS. WARSHAW: P-29.

9 THE COURT: Which is?

10 THE WITNESS: The e-mail correspondence that
11 we've been going through.

12 THE COURT: Any objection?

13 MS. HOWLETT: The only problem with the e-mail
14 -- just the first two pages of P-29.

15 THE COURT: What about them? P-29, is it just
16 the first two pages? Actually, the 504 plan is
17 referenced as an attachment to Mr. Cusack's e-mail, so
18 that does kind of make it complete.

19 MS. HOWLETT: (Out of microphone range), Your
20 Honor, but I do see what you're saying about the
21 attachment. No objection, Your Honor. Thank you.

22 THE COURT: Okay.

23 (P-29 Entered into
24 Evidence)

25 MS. WARSHAW: We talked about P-32, which was

1 both of Dr. Schubert's reports.

2 MS. HOWLETT: No objection, Your Honor.

3 Except for the previously objected --

4 THE COURT: Right.

5 MS. HOWLETT: -- due to the scope and date.

6 THE COURT: Right.

7 (P-32 Entered into

8 Evidence)

9 MS. WARSHAW: P-33, Dr. Platt's report.

10 THE COURT: Same objection.

11 MS. HOWLETT: Same. Thank you, Your Honor.

12 THE COURT: I'm going to allow it in and when
13 I decide, I'll reference it in the decision. If I
14 decide not to allow it, then I'll strike it. But right
15 now, it's in with that objection noted.

16 MS. HOWLETT: Understood, Your Honor.

17 THE COURT: Okay?

18 (P-33 Entered into

19 Evidence)

20 MS. WARSHAW: R-37, I'm not sure was put in or
21 not.

22 THE COURT: I'll tell you in a second. R-37
23 is in.

24 MS. WARSHAW: It's in already. Let's see. R-
25 27, I believe is already in.

1 THE COURT: Yes.

2 MS. WARSHAW: P-26, the IEPs.

3 MS. HOWLETT: That's already in.

4 THE COURT: Already in.

5 MS. WARSHAW: Okay. R-16 is in, right?

6 THE COURT: Uh huh.

7 MS. WARSHAW: Okay. I think we're done.

8 THE COURT: I'm just going through my notes to

9 double check here. Yeah, I think you're right. I

10 think we've covered them all.

11 Okay, you can step down. Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Next witness.

14 MS. HOWLETT: Yes, Your Honor. We just have

15 one more witness scheduled for today and I think (out

16 of microphone range.)

17 (Whereupon witness exits the courtroom)

18 THE COURT: And you two need to call Diana and

19 schedule dates.

20 MS. HOWLETT: I think we responded via e-mail.

21 THE COURT: Okay. I have one date left, I

22 think.

23 MS. WARSHAW: Which date was that because

24 there was -- we have experts that need to be scheduled

25 and --

1 THE COURT: I have a limited number of dates
2 as you both know. If your experts can't make it when
3 I'm available, I don't know what else to do. I'm not
4 trying to tell anybody that you can't have your
5 experts, but you know, I'm not coming in on Saturday.
6 I'm making a joke. You know I have committed dates.
7 Plus, you get a hold of two during the week and you
8 can't schedule anything on Thursday, that gives me two
9 days in a week I can schedule EDS cases and I have a
10 pretty substantial calendar without EDS. So, that's
11 the beast. I read the report. Did you read the report
12 about how bad we are at doing EDS?

13 MS. WARSHAW: I wrote part of that report,
14 yes.

15 THE COURT: You left out the part about how
16 counsel keep asking for adjournments.

17 MS. WARSHAW: No, that --

18 THE COURT: I'm not pointing fingers at
19 anybody in this room, but --

20 MS. WARSHAW: I think that's very true.

21 THE COURT: That's a substantial problem.

22 MS. WARSHAW: That is in the report, too.

23 THE COURT: (Out of microphone range) discuss
24 that on the record --

25 MS. WARSHAW: We definitely addressed that.

1 THE COURT: -- but it might as well be on the
2 record.

3 MS. WARSHAW: (Out of microphone range), yeah,
4 absolutely.

5 THE COURT: Ms. Howlett, before we just
6 convolute the record completely with our thoughts about
7 how poorly we do EDS here, go get your other witness.

8 MS. HOWLETT: Okay. Thank you.

9 MS. WARSHAW: Who is it?

10 MS. HOWLETT: Tracy Costa.

11 (Whereupon Ms. Howlett exits the courtroom)

12 MS. WARSHAW: Tracy who?

13 THE COURT: Costo, I believe she said.

14 UNIDENTIFIED MALE: Costa, C-O-S-T-A.

15 THE COURT: Costa.

16 (Whereupon Ms. Howlett and witness enter the courtroom)

17 THE WITNESS: Good afternoon.

18 THE COURT: Good afternoon, Ms. Costa. How
19 are you?

20 THE WITNESS: I'm well. How are you?

21 THE COURT: Thank you. I'm fine. Have a
22 seat.

23 THE WITNESS: Okay. I didn't want to sit
24 unless I was supposed to.

25 THE COURT: Raise your right hand.

1 T R A C Y C O S T A, RESPONDENT'S WITNESS, SWORN.

2 THE COURT: State your name. Spell your last
3 name.

4 THE WITNESS: Tracy Costa, C-O-S-T-A.

5 THE COURT: Go ahead.

6 DIRECT EXAMINATION BY MS. HOWLETT:

7 Q Hi, Ms. Costa. How are you doing?

8 A I'm well. How are you?

9 Q Good. We just need to establish for the
10 record a little bit about your background.

11 A Okay.

12 Q So I just have some really general questions.
13 Your position and place of employment?

14 A I work at West Morris Mendham High School as a
15 school social worker.

16 Q And how long have you held that position?

17 A Thirteen years.

18 Q And what are some of your general duties as a
19 school social worker?

20 A I am a case manager, where I manage students that
21 are classified for special education and related
22 services. I provide school-based counseling for
23 students, I provide crisis counseling for students,
24 collaboration with teachers.

25 Q And so, you said you -- you testified you've

1 been doing that for 13 years. What did you do before
2 that?

3 A Before that, I worked at Family Intervention
4 Services as a crisis counselor and supervisor. I used
5 to go into people's homes and provide therapy once they
6 were screened but not found in need of hospitalization
7 for psychiatric reasons.

8 Q And how long did you do that for?

9 A I did that for five and a half years.

10 Q And do you remember what you did before that?

11 A Before that, I was in undergraduate school and I
12 worked in a group home for developmentally disabled
13 adults.

14 Q And where did you go to school?

15 A I graduated Kean University for my undergrad and
16 Fordham University for my grad.

17 Q And what certs or degrees do you hold from
18 those schools?

19 A I have a bachelor's of social work and a master's
20 of social work and I'm a certified school social
21 worker.

22 Q So, as far as licenses, any --

23 A A licensed social worker.

24 Q And anything else?

25 A I think that's about it.

1 THE COURT: That's enough.

2 THE WITNESS: Yeah, I think so.

3 BY MS. HOWLETT:

4 Q In your role at Mendham High School, do you
5 work in the BSP program?

6 A Yes.

7 Q And how long have you been part of the BSP
8 program?

9 A Since it was created.

10 Q Do you remember when that was?

11 A My best guess would probably be about six, seven
12 years ago.

13 Q There's been a lot of discussion about the
14 name of the program --

15 A Yes.

16 Q -- at Mendham High School.

17 A Yes.

18 Q What's the current name of the program?

19 A The Being Successful Program.

20 Q Did it have a -- was it previously referred
21 to as something else?

22 A Yes.

23 Q And what was that?

24 A Behavioral Support Program.

25 Q And when -- do you recall when the name

1 changed?

2 A No, I do not recall. The best of my -- maybe
3 three years ago.

4 Q Was it changed prior to the 16/17 school
5 year?

6 A Yes.

7 Q Not to reiterate, but -- so, during the 16/17
8 school year, was it referred to as the Being Successful
9 Program?

10 A Yes.

11 Q Is it important, what it's called?

12 A The name changed; the services did not change.

13 Q Can you talk a little bit about what the
14 services are, just generally, and then we can get more
15 specific in a minute.

16 A It is to provide an environment for students that
17 might be having a difficult time in the mainstream
18 classes for social emotional reasons. They might have
19 difficulties with the size of classes, the delivery of
20 academic material, as well as individualizing the
21 academics to provide them services where, if we have to
22 stop an English class to address a social emotional
23 issue without it hindering their progress academically
24 or socially and emotionally.

25 Q Do all the students in the BSP program --

1 (out of microphone range) BSP program at Mendham have
2 disciplinary issues?

3 A As a whole, no.

4 Q Are there students that attend the BSP that
5 do not have disciplinary issues?

6 A Yes.

7 Q There's a black binder in front of you.

8 A Yes.

9 Q Can you please open it to number 12, exhibit
10 number 12?

11 A Yes.

12 Q Have you seen this document before?

13 A I have.

14 Q Do you know who drafted this document?

15 A I do not.

16 Q But you have reviewed it?

17 A Absolutely.

18 Q To your knowledge as being part of the BSP
19 for the past seven years, is this document reflective
20 of the program that's offered in the BSP?

21 A Yes.

22 (R-12 Marked for
23 Identification)

24 Q If you turn to the second page of the
25 document, which is marked "WM043" at the bottom --

1 A Yes.

2 Q -- it describes the target population.

3 A Yes.

4 Q You don't have to read it verbatim

5 necessarily -- you can use some of your own words --

6 but can you describe what the target population of the

7 BSP is?

8 A It's really for the students that have social

9 emotional anxiety, depression, social anxiety, have a

10 difficult time maybe sustaining a whole class, coming

11 to school on a regular basis or on time, so they may

12 have a lot of tardies or absences.

13 Q Does the target population include students

14 that suffer from major depressive disorder?

15 A Yes.

16 Q What about school-related anxiety?

17 A Yes.

18 Q And I'm sorry. Before, you mentioned

19 attendance issues.

20 A Yes.

21 Q Is that one of the target populations BSP is

22 designed to --

23 A Yes.

24 Q So the word "behavioral" is referred to in

25 here --

1 A Uh huh.

2 Q -- in the document, generally. Is
3 "behavioral" designed to refer specifically to
4 disciplinary issues or can it refer to other emotional
5 issues?

6 A It really covers a large gamut of diagnoses and,
7 for the lack of better words, behaviors we may see.
8 So, behaviors might be resistance to coming to school,
9 it could be not completing homework, to shutting down a
10 class. "Behaviors" has a wide range of descriptors.

11 Q And if you just flip to, I think, the next
12 page -- yeah -- "044" at the bottom. It talks about
13 staffing. Can you describe what sort of staff are in
14 the BSP?

15 A So, we have three full-time teachers, so the
16 teacher that is highly qualified in a certain academic
17 area teaches. We also have a paraprofessional, an
18 aide, in each class that we have, as well as myself,
19 that provides school-based counseling, as well as some
20 of the other case managers that do school-based
21 counseling as well.

22 Q And how many students are in BSP?

23 A Currently, we have 25.

24 Q Do you know what the ratio is in the room?

25 A I do not know.

1 Q Is it always around 25 students or does it
2 fluctuate?

3 A We fluctuate.

4 Q And is the BSP contained in a single
5 classroom or is their multiple? Can you just paint the
6 picture for us of what it looks like?

7 A We have two classrooms that are adjoined by a
8 shared door, so we'll have two sections possibly going
9 on at the same time. We also utilize adaptive PE, so,
10 obviously, that's in another room as well.

11 Q Can students receive advanced placement
12 classes in BSP?

13 A Not in BSP; outside of BSP.

14 Q Outside of BSP meaning --

15 A In the mainstream -- in the mainstream classes.

16 Q And what if a student is struggling with
17 being in the mainstream?

18 A What happens is, they are assigned a responsible
19 teacher within the special education department. That
20 teacher then tracks that student and is in constant
21 communication with all teachers involved with that
22 student. So, whether that student's teacher is in the
23 BSP program, as well as outside -- so we can provide
24 supports in and outside of the program.

25 Q Can the BSP adapt to any academic level to

1 meet an individual student's needs?

2 A To provide extra assistance and things of that
3 nature? I'm just trying to get a clarification.

4 Q Well, I guess both ways. I guess the
5 question is, once the student's academic needs are
6 identified in an IEP, do you review that as part of a
7 student coming into BSP?

8 A Yes.

9 Q Is the BSP adapted -- can the BSP adapt
10 academically to make academics either less or more
11 challenging --

12 A Yes.

13 Q -- depending on the student's needs?

14 A So, we have really mainly two levels of classes
15 within the BSP, so we have studies and we have
16 academic, which is a college-prep level. So, the
17 students are taught the material, but their assessments
18 and what they produce is different. So, the teachers
19 that are -- the teachers are asking those students for
20 one set of work for studies and one set of academic,
21 just like the mainstream.

22 Q And we had some earlier -- strike that, Your
23 Honor. If a student is, like you indicated, if a
24 student is struggling going into their mainstream
25 classes, as part of the BSP, are they offered some sort

1 of accommodation to meet that --

2 A Sometimes they are unable to attend a mainstream
3 class for a lot of different reasons. It could be
4 something from home; it could be something that
5 happened in school. So, myself, along with the
6 teachers, will address that. Maybe that day, they
7 didn't end up going to class because we had to address
8 an issue and we have to address that issue for them to
9 be successful in the academic area, so there are times
10 they might miss class. But then, the communication is
11 with those teachers that -- that they missed class.

12 Q Let's talk about students that are
13 struggling, that have school-based anxiety, so they're
14 having trouble maybe getting into the -- into the high
15 school building to begin with.

16 A Yup.

17 Q Have you seen situations like that as part of
18 your BSP?

19 A Yes.

20 Q And what are some of the services that you
21 provide to students like that?

22 A So, we have a wide range of services. We have
23 students that will not come into the school building,
24 so we've gone out to the home to work with them there,
25 to then bring them back into the school building. When

1 they come back into the school building, sometimes they
2 get to the door and that's good for that day. And
3 then, maybe the next time, they come into the lobby or
4 into my office. You know, the goal is for them to get
5 into the building first, for them to feel comfortable
6 and confident, to establish relationships with
7 teachers, to then gradually get them into the
8 classroom. It all depends on how severe their anxiety
9 is.

10 Q So, do you gear those sort of services,
11 accommodations, to the specific student's needs?

12 A Yes.

13 Q The document that's in front of you, P-12 --
14 R-12, excuse me -- it includes, on page 045, and I
15 believe, on 046, it kind of goes on, and incentive
16 program or a points program. Can you describe what
17 that's all about?

18 A So, they have a general point system which is in
19 this document, and then it is individualized for the
20 student. So, if the student is, you know, showing
21 proficiency with completing assignments, but their big
22 issue is attending school on a regular basis, we'll
23 create an individualized incentive for them about, you
24 know, how we can get them into the school building,
25 what they will earn to be able to get into the school

1 building, and things of that nature.

2 Q So, is the incentive program really geared
3 towards disciplinary issues or is it more geared
4 towards --

5 A Positive, to get them into the school and have
6 them feel comfortable within the building; to feel
7 success.

8 Q Are there also accomplishments or incentives
9 for completion of work?

10 A Yes.

11 Q And a consistent attendance?

12 A Yes. It all depends on what the individual's
13 needs are.

14 MS. HOWLETT: Your Honor, I don't think we
15 moved in R-12. We'd like to.

16 THE COURT: We didn't.

17 Any objection?

18 MS. WARSHAW: The only objection is to the --
19 to what it's called, the Being Successful Program,
20 because nobody seemed to be able to establish the date
21 of when that happened and the IEP doesn't say that, so
22 -- but other than that, we'll accept the document.

23 THE COURT: It's in.

24 (R-12 Entered into
25 Evidence)

1 MS. HOWLETT: Thank you, Your Honor.

2 THE COURT: Noted.

3 MS. HOWLETT: We do not have any more

4 questions for this witness at this time.

5 THE COURT: You're up.

6 CROSS EXAMINATION BY MS. WARSHAW:

7 Q Ms. Costa, isn't it true that you had one

8 conversation with my clients?

9 A I don't recall.

10 Q Do you recall her daughter, J.H.?

11 A I don't.

12 Q You don't recall them coming to visit the BSP

13 program at the Mendham High School?

14 A I don't.

15 Q Okay. Isn't it true that the Behavioral

16 Support Program at the Mendham High School, you do

17 whatever you can to get the kids to come to school?

18 A Yes.

19 Q And isn't it true that students who are

20 advanced levels in academics would have to take their

21 classes in the general education setting, not in the

22 Behavioral Support Program?

23 A Can you clarify that? I'm not -- you said

24 "advanced in academics." I'm not sure what you're

25 asking.

1 Q If you have a student who's at an advanced or
2 honors level academics, they would have to take their
3 high level classes in the general ed setting --

4 A Correct.

5 Q -- if they were in the Behavioral Support
6 Program at Mendham High School.

7 A Correct.

8 Q Is that correct?

9 A Uh huh.

10 Q Yes, that's correct?

11 THE COURT: Yes.

12 BY MS. WARSHAW:

13 Q And the Behavioral Support Program is a self-
14 contained program. Is that correct?

15 A It is not a self-contained. They're not in there
16 all day.

17 Q Okay. Isn't it true that the Behavior
18 Support Program at Mendham High School used to be only
19 one classroom, rather than two?

20 A No, we had multiple classrooms; they just weren't
21 side-by-side.

22 Q And I'm going to refer you to what was marked
23 P-12.

24 MS. HOWLETT: P-12 or R-12?

25 MS. WARSHAW: R-12. I'm sorry.

1 MS. HOWLETT: No, I just wanted to --

2 BY MS. WARSHAW:

3 Q On the first page, under "Target Population,"
4 isn't it true that this refers to students that have a
5 pattern of school failure that's either emerging or
6 pervasive?

7 A I'm not clear what you're asking.

8 Q Isn't it true that students that are in the
9 Behavioral Support Program at Mendham High School have
10 a pattern or school failure or -- that it's either
11 emerging or pervasive?

12 A School failure in what way?

13 Q It says "school failure" in your own
14 brochure, so --

15 A Well, I'm not too sure what you're asking -- if
16 you're asking academics or if you're asking social
17 emotional. I'm not sure what you're asking.

18 Q Okay. In the Behavioral Support Program at
19 Mendham, isn't it true that students have academic
20 failures?

21 A No, not all the time.

22 Q But some do. Isn't that correct?

23 A Some may struggle academically, yes.

24 Q And isn't it true that some of the students
25 at the Behavioral Support Program at Mendham High

1 School have behavioral issues?

2 A Such as?

3 Q Such as they've been suspended or issues with
4 behavior in class.

5 A I don't have anybody in the program like that.

6 Q Have you ever had anybody in the program like
7 that?

8 A Yes.

9 Q And referring to page four of the R-12, under
10 "Incentive Program," isn't it true that it states that
11 students can earn up to 13 points per class by showing
12 up on time, remaining alert, participating, respect
13 oneself and others, and accomplishments?

14 A Yes.

15 Q And isn't it true that in order to go on a
16 field trip, a monthly field trip, they have to earn a
17 certain number of points?

18 A Yes.

19 MS. WARSHAW: All right. No further
20 questions.

21 MS. HOWLETT: I just have one, Your Honor, if
22 you don't mind.

23 THE COURT: I don't mind.

24 MS. HOWLETT: We're all here anyway.

25 REDIRECT EXAMINATION BY MS. HOWLETT:

1 Q Ms. Costa, with the incentive program, what's
2 the benefit that you've seen, as part of the BSP, of a
3 program like that? Or have you seen a benefit?

4 A It provides them a purpose. A lot of times, you
5 have students that have issues that might get in the
6 way of them seeing positive things, and when they start
7 earning things and seeing good, it gives them
8 incentives. It gives them reasons to keep succeeding.

9 Q In your experience in your seven years of
10 working at BSP, have you seen improvement in students
11 with their inability to come to school?

12 A Yes.

13 Q Have you seen students make progress as far
14 as their school-related anxiety goes?

15 A Yes.

16 MS. HOWLETT: No further questions, Your
17 Honor.

18 THE COURT: You can step down. Thank you.

19 THE WITNESS: All right.

20 THE COURT: Okay. Do we have a date in play?

21 MS. WARSHAW: It was June 4th, but we got a
22 note from Diana that it was no longer available and I
23 think there was one other date that she was
24 contemplating.

25 THE COURT: The question is, do I have a date

1 in play, because I'm not leaving here today without a
2 date in play.

3 MS. WARSHAW: Good.

4 MS. HOWLETT: I thought May 30th, was on the
5 table, so I'm not sure what happened to May 30th.

6 THE COURT: I'm going go off the record. I'm
7 going to go find out, so --

8 MS. HOWLETT: Thank you, Your Honor.

9 MS. WARSHAW: How many more dates do you need?

10 {Whereupon, the proceedings were adjourned.}

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1 STATE OF NEW JERSEY }

2 COUNTY OF }

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4 I, Peggy Wasco, assigned transcriber, do
5 hereby affirm that the foregoing is a true and accurate
6 transcript of the proceedings in the matter of F.H. and
7 M.H. on behalf of J.H. vs. West Morris Regional High
8 Board of Education, bearing Docket No. EDS 10706-17,
9 heard on April 9, 2018 before the Office of
10 Administrative Law Court.
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STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO. EDS 10706-17

_____	:	
F.H. AND M.H.	:	
ON BEHALF OF J.H.,	:	
	:	
Petitioner,	:	
	:	TRANSCRIPT
-vs-	:	OF
	:	RECORDED PROCEEDINGS
WEST MORRIS REGIONAL HIGH	:	
SCHOOL BOARD OF	:	
EDUCATION,	:	
	:	
Respondent.	:	
_____	:	

April 23, 2018

BEFORE:

THE HONORABLE THOMAS BETANCOURT, A.L.J.

APPEARANCES:

WARSHAW LAW FIRM, LLC
By: Julie Warshaw, Esq.
Attorney(s) for Petitioner

CLEARY, GIACOBBE, ALFIERI & JACOBS
By: Jodi S. Howlett, Esq.
Attorney(s) for Respondent

Transcriber: Deborah Plyler
CRT SUPPORT CORPORATION
2082 Highway 35, P.O. Box 785
South Amboy, N.J. 08879
Phone: (732) 721-4330
Fax: (732) 721-7650

I N D E X

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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DAVID LEIGH

By Ms. Howlett	5		48	
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E X H I B I T S

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
P-14	Parent Letter to Cusack - 10/15/16		4
P-16	Not Identified		4
P-19	Parent Letter to Cusack		4
P-26	Draft IEP - May 16, 2017		4
P-50	CD Recording of May 16, 2017 IEP Meeting	27	27
R-10	Draft IEP - May 16, 2017		52

1 THE COURT: All right. There we go. Okay.
2 We're on the record for a continued hearing on F.H. and
3 M.H. On Behalf Of J.H. vs. West Morris Regional High
4 School Board of Education, the Docket Number is EDS
5 10706-2017, today is April 23rd, I am Judge Betancourt.

6 Appearances for the Petitioner?

7 MS. WARSHAW: Julie Warshaw, the Warshaw Law
8 Firm, representing the Petitioners.

9 THE COURT: Good morning.

10 MS. HOWLETT: Good morning, Your Honor. Jodi
11 Howlett, Clearly, Giacobbe, Alfieri & Jacobs, on behalf
12 of the Respondent School District.

13 THE COURT: Good morning. All right. Before
14 we went on the record we did some housekeeping off the
15 record and the following exhibits are in P-14, P-16,
16 P-19 and P-26 without objection.

17 So, your next witness, Ms. Howlett.

18 (P-14, P-16, P-19
19 and P-26 Entered
20 into Evidence)

21 MS. HOWLETT: Yes, Your Honor. Just one
22 moment, please -- (out of microphone range)

23 THE COURT: Good morning.

24 Mr. LEIGH: Good morning.

25 THE COURT: Have a seat and raise your right

1 hand, please.

2 D A V I D L E I G H, RESPONDENT'S WITNESS SWORN.

3 THE WITNESS: I do.

4 THE COURT: Thank you. State your name please
5 and spell your last name.

6 THE WITNESS: David Leigh, L-E-I-G-H.

7 THE COURT: Proceed.

8 MS. HOWLETT: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MS. HOWLETT:

10 Q Good morning, Dr. Leigh.

11 A Good morning.

12 Q How are you?

13 A Good. How are you?

14 Q Good. So I have to establish for the Court
15 who you are so I'm going to ask you some general
16 questions about your employment and background, so if
17 you want just to for the record just state your current
18 position and place of employment.

19 A So there are two, one I am currently the Principal
20 of the New Alliance Academy which is a therapeutic high
21 school in Paramus, New Jersey, and I also do part-time
22 private practice work in Florham Park and Morristown as
23 a licensed Psychologist.

24 Q And how long have you held both of those
25 positions?

1 A So I've been the Principal of New Alliance Academy
2 since August 1, 2017 and I've been in private practice
3 since 2004.

4 Q And what did you do before that?

5 A I was Director of Special Services and in public
6 schools for 26 years, first as a School Psychologist
7 for 9 years and the last 17 as the Director of Special
8 Services, the last 8 of which were at the West Morris
9 Regional School District as Director.

10 Q And what district did you work in before West
11 Morris?

12 A Randolph.

13 Q Was there another district before that also?

14 A Morris Hills Regional.

15 Q Any more?

16 A A School Psychologist at High Point Regional.

17 Q Okay. And where did you go to school?

18 A So a Bachelor's at SUNY Stony Brook, Montclair
19 State for the Certification as a School Psychologist
20 and a Master's in Educational Counseling, and Rutgers
21 Graduate School of Applied and Professional Psychology
22 for my Doctorate in School Psychology.

23 Q Are there any other licenses or degrees that
24 you haven't already described that you hold?

25 A The Principal Certificate which I, you know,

1 achieved through NJ EXCEL.

2 Q Okay. And you know why we're today and what
3 student that we're referring to.

4 A Yes.

5 Q We're going to refer to her as "J.H.", I
6 think that's what we agreed on in our last proceeding,
7 so just a little bit of background about how or what
8 your role as the -- or your role was -- you're no
9 longer the Director, what your role is in relation to
10 the Child Study Team as the Director of Special
11 Services and if you just want to just describe that
12 generally?

13 A Sure. So as the Director I would oversee all of
14 the Special education programs and services provided
15 throughout the District, which were two high schools.

16 I worked closely with each of the Child Study Team
17 members who were the Case Managers of all the students
18 who were eligible for special education and related
19 services and we worked closely in terms of ensuring
20 that we were complying with the law, that we offering
21 programs and services that were aligned to the
22 continuum of options and we worked hard to develop in
23 District programs that we felt were appropriate, so
24 that was basically it.

25 Q And would the Child Study Team Case Managers

1 consult with you if they had questions about
2 eligibility or programming and things like that?

3 A Yes.

4 Q Was that regularly part of your duties?

5 A Yes.

6 Q Dr. Leigh, can you just tell us a little bit
7 about how you kind of came into the case regarding
8 J.H.?

9 A Sure.

10 Q If you recall.

11 A Sure. So I remember that Joe Cusack was the
12 Guidance Counselor and Kendra Dickerson was the Case
13 Manager, there was a period of time there where Kendra
14 was out on maternity leave and there was a maternity
15 leave replacement.

16 What I recall was that J.H. was struggling
17 significantly with anxiety and depression and had --
18 and this was now at the beginning of sophomore year,
19 was out and was at a program called, "ICCPC," and was
20 there for anxiety and depression and tried to come back
21 for a short period in December of 2016 but after a
22 couple of days that didn't work.

23 A 504 Plan was put into effect and subsequently a
24 referral to the Child Study Team where an evaluation
25 took place during that winter and we then met to offer

1 a program.

2 Q Were you part of the eligibility
3 determination or at those meetings? Do you recall?

4 A I do not recall being at the eligibility
5 determination meeting.

6 Q We had previous testimony that the Case
7 Manager involved -- I know that you just mentioned too
8 that there was a maternity replacement, the Case
9 Manager is listed as Ms. Dickerson.

10 A Okay.

11 Q Did you -- did Ms. Dickerson provide you with
12 any documentation to review as far as, you know, making
13 any determinations about J.H.?

14 A She did, I mean, she -- we reviewed the reports
15 together, that was part of what I tended to do quite
16 often with the Case Managers. So, yes, we reviewed
17 those reports and the evaluations, so the Psychiatric
18 Evaluation and the Psychological Evaluation.

19 Q There's a binder in front of you, a black
20 binder.

21 A Okay.

22 Q Could you just turn to the tab marked R-16?

23 A So I'm seeing a lot of numbers --

24 Q Or it's probably just 16.

25 A "16"?

1 Q Yeah.

2 A Okay. Yeah.

3 Q I'm sorry.

4 A That's okay. Yes.

5 Q Have you seen that before? Does that look
6 familiar?

7 A Yes.

8 Q And can you just describe what that is? It's
9 already been moved into evidence, but --

10 A It's a Report of the Psychological Evaluation
11 conducted by Sherry Wilk.

12 Q And did you review that report when you were
13 consulting with Ms. Dickerson?

14 A Yes.

15 Q And can you just flip over to the next one,
16 17?

17 A Sure.

18 Q And just kind of do the same thing and if you
19 could just tell me what that is?

20 A It's a Psychiatric Evaluation conducted by ICCPC.

21 Q And did you see that before?

22 A Yes.

23 Q And is that something that you went over with
24 Ms. Dickerson?

25 A Yes.

Leigh - Direct

11

1 Q Just a couple more and if you could just look
2 at 13, 14 and 15?

3 A Sure.

4 Q And go through each of those individually and
5 just let me know if you've seen those and if those were
6 also documents that you considered when you consulted
7 with Ms. Dickerson?

8 A Sure. This is a memo dated, "10/20/2016," from
9 ICCPC from the program Psychiatrist and the Senior
10 Clinician, Ms. Dolgos (phonetic), number 14 is also
11 ICCPC from the same two professionals dated,
12 "12/2/2016," and the next document is from the same two
13 professionals from ICCPC dated, "January 6, 2017."

14 Q And have you seen those before?

15 A Yes.

16 Q So after reviewing that documentation did you
17 consult with Ms. Dickerson about what the appropriate
18 program might be for J.H.?

19 A Yes.

20 Q And what was your recommendation or your --
21 what did you offer as far as consulting with Ms.
22 Dickerson as for as the programming for J.H.?

23 A The BSP Program at Mendham High School.

24 Q And can you tell us a little bit -- we've had
25 some previous discussions about the BSP, but it would

1 be helpful if you could describe --

2 A Sure.

3 Q -- your involvement in the BSP and what the
4 program is all about?

5 A So I joined the District in West Morris as the
6 Director in August of 2009 and one of the first charges
7 to me as the new Director was to create a program for
8 students with emotional/psychiatric disorders or
9 conditions that would be based at Mendham High School.

10 There was a history in the District of having a
11 BSP Program at West Morris Central but there was a
12 feeling that there could be a different version of this
13 program that could target the needs of a different type
14 of student and so we embarked on researching the
15 different kinds of programs that were public school
16 based.

17 Again, the goal is to create as many opportunities
18 in District in the least restrictive setting so in
19 doing that we came up with a program where we offer all
20 of the core academic content areas as a replacement
21 class which offers a better teacher to student ratio so
22 that the students get more individualized support in a
23 less overwhelming setting because there's fewer
24 students in the classroom.

25 The teachers are selected very carefully, of

1 course they're Certified Special Education Teachers,
2 they're highly qualified in their content area, but
3 you're looking for teachers who really have a skill,
4 and this is a special skill, in working with students
5 that are fragile emotionally.

6 As that program developed -- in year one it
7 started with 3 students, it evolved into a program that
8 over the next 6, 7 years on average was meeting the
9 needs of students, you know, anywhere from 18 up to 28
10 students a year who were accessing the program on a
11 part-time or even full-time basis.

12 The reality was a student can go into that program
13 and be there for the entire school day if that was
14 necessary. It offered the core academic classes, it
15 included Adaptive Physical Education that was very low
16 stress, there was a Yoga instructor brought in every
17 Friday where the students were learning relaxation
18 techniques.

19 And we also incorporated a Transition Program
20 where the structured learning experienced Coordinator
21 who was working closely with the teaching staff because
22 we offered a post secondary planning course and so this
23 was for students who would then be taking an internship
24 and assessed for what type of internship might work for
25 them as they prepared for life after high school.

1 So, again, there were multiple components to the
2 program. There was a point system that was
3 incorporated that was daily and weekly and it was
4 really just to have feedback to the students that
5 they're on track and that they're meeting their goals.

6 We tried to create a family atmosphere up there
7 because the students that ended up being placed in the
8 program -- it was attracting a student who was
9 struggling academically and/or socially and that impact
10 emotionally was causing them to shut down and shut down
11 to the extent that they were having a very difficult
12 time, many of them, getting to school regularly.

13 And so we needed to create a therapeutic setting
14 with a primary Child Study Team member who would
15 provide therapeutic support, Teachers that were very
16 sensitive and skilled in working with the students, and
17 a system that would support the students for knowing
18 that they were making progress.

19 We were trying to get kids that were really stuck
20 emotionally and trying to get them unstuck, more
21 confident, and back to performing to their potential,
22 For some students they could access the general ed
23 setting, others could not, the goal was for them to
24 eventually do that, that's the goal under the least
25 restrictive environment, so that's the gist of the

1 program.

2 Q And can the -- as far as the academics go,
3 can the BSP be tailored to meet an individual student's
4 academic needs or challenges or perhaps even providing
5 a more aggressive academic environment?

6 A Absolutely, absolutely. There's no doubt that the
7 Teachers in that -- in those classes were skilled at
8 differentiating the instruction. It's a key and that's
9 why it's a smaller class size, that's why there's a
10 Teacher Assistant in each of those sections so that
11 there's two adults in each of the rooms in each course.

12 And the fact was that we had students there that
13 were quite capable academically, had no learning
14 challenges, were bright, we absolutely college -- you
15 know, on a college path and, you know, our Teachers
16 were able to meet their needs.

17 The reality was this is -- you know, it was a
18 program that we were primarily concerned with the
19 emotional challenge but we were equally concerned with
20 ensuring that the students were challenged
21 academically.

22 Q Could you just turn to tab 12?

23 A Sure.

24 Q Have you seen this before?

25 A Yes.

1 Q Is this an accurate description of what the
2 BSP Program is in your opinion?

3 A Yes.

4 Q So let's talk about J.H. specifically and I
5 know, you know, we're going into the recesses here
6 because it's been a while but as much as you can
7 remember, can you talk about why you thought the BSP
8 might be appropriate specifically for J.H.?

9 A Yes, J.H. presented with both an academic skill
10 set and a psychiatric profile that was consistent with
11 the type of student that was being targeted through the
12 BSP and that is students who are really primarily
13 struggling with anxiety and depression.

14 And, again, it was the combination of the two and
15 from what I recall J.H. was having trouble having
16 insight as to what the issues were that were really
17 impacting the ability to get into school and to perform
18 and to be productive consistently and that program was
19 all about in real time trying to help the student
20 understand what their anxiety was, what the sources
21 were, and to target how to manage that -- and how to
22 manage those.

23 There was a good ratio of male to female, it was
24 about a 50/50 split and so we definitely felt like that
25 family atmosphere, the close knit, the skill set of the

1 Teachers and the therapeutic support would be -- would
2 be an appropriate fit.

3 MS. HOWLETT: Just one moment, Your Honor.

4 THE COURT: Hm-hm.

5 BY MS. HOWLETT:

6 Q We had attended an IEP meeting back in April
7 of 2017 which we had previous testimony on and we had
8 stipulated to the IEP that was proposed on that day.
9 Can you talk about some of the other things that were
10 discussed at the meeting, there has been some
11 discussion about considering some other out of District
12 placement schools?

13 A Sure. So I believe that there was a question
14 asked as to, "Well, if the BSP Program didn't work,
15 then what?" And I believe my response, you know,
16 regarded the notion that well, we look under the least
17 restrictive environment, we look at the different
18 program options, and then we offer a program with the
19 supports that we feel is appropriate in District which
20 is a good place to start if we feel that it's
21 appropriate and we did.

22 But if that did not work we would then look at New
23 Jersey approved private day placements that were
24 therapeutic in nature to provide the support that was
25 needed. I think there was a question about which ones

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1 and I believe I mentioned a few that came to mind that
2 I thought could be a potential fit and I believe then
3 there was a discussion about which of the programs that
4 the family was interested in or was thinking about in
5 addition, you know, in conjunction with their Attorney.

6 Q To your recollection did the Child Study Team
7 actually propose any out of District placements?

8 A No.

9 Q Did you have discussions with J.H.'s parents
10 about potential program options aside from the IEP
11 meeting, maybe telephone conferences or other meetings
12 about the BSP, to your recollection?

13 A Not to my recollection.

14 Q Okay.

15 MS. HOWLETT: I have no further questions,
16 Your Honor, at this time.

17 THE COURT: Cross?

18 MS. WARSHAW: Okay.

19 CROSS EXAMINATION BY MS. WARSHAW:

20 Q Dr. Leigh, I'm going to refer you to R-12 and
21 the program that you started was the Behavioral Support
22 Program. Is that correct?

23 A Yes.

24 Q But this program is listed as the, "Being
25 Successful Program." Correct?

1 A Correct.

2 Q Were you aware that the April 6, 2017 IEP
3 referred only to the Behavioral Support Program at the
4 Mendham High School?

5 A Not to my recollection.

6 Q And to your knowledge J.H. never had any
7 behavior issues. Correct?

8 A Correct.

9 Q And the --

10 A Well, let me -- let me clarify, "Behavioral
11 issues," there can be a wide interpretation of that so
12 not coming to school is a behavioral issues, not being
13 in school is a behavioral issue.

14 Certainly we did not have any evidence that while
15 in school there were problems with authority, but not
16 coming to school is an issue behaviorally.

17 Q So from your perspective it was the school
18 refusal. Is that what you're saying?

19 A There is many different interchangeable
20 descriptions, there's school phobia, there's school
21 avoidance, there's school refusal, often they're used
22 and people understand that the notion is that the
23 student is not coming to school.

24 MS. WARSHAW: I'm sorry, Your Honor.

25 THE COURT: Take your time.

1 MS. WARSHAW: I have to find my version of it.

2 BY MS. WARSHAW:

3 Q So I'm going to refer you to the page what's
4 marked as WM-043 of that brochure, it's the second
5 page, and in the fifth line down for the, "Target
6 Population," isn't it true that it talks about,
7 "Students who have a pattern of school failure that
8 either is emerging or pervasive?"

9 A Yes.

10 Q Okay. And isn't it true that when we were at
11 the IEP meeting in May of 2017 you described the
12 Behavior Support Program as one where a student can
13 take gym class online?

14 A If necessary.

15 Q And we had had a discussion about how the
16 adaptive gym class for special education students was
17 not appropriate for J.H. and she would have to take say
18 volley ball online in the Behavior Support Program.
19 Isn't that correct?

20 A I do not recall that specifically but that could
21 have been.

22 Q So she wouldn't be put in a general education
23 gym class.

24 A Correct.

25 Q Correct?

1 A Correct.

2 Q Okay. And you had indicated that the BSP
3 Program, the Behavior Support Program, had core classes
4 but for a student who was college bound and they wanted
5 to take advanced classes they would have to go to the
6 general ed classes. Is that correct?

7 A That is not correct.

8 Q You didn't say that at the May 16, 2017 IEP
9 meeting?

10 A I did not and would not say that.

11 Q So in your view is there any time that a
12 student in the Behavior Support Program would need to
13 go to the general ed classes?

14 A If they needed to take an IB or an AP course, yes,
15 those -- that level of course is not offered through
16 the BSP.

17 Q Okay. And in order to get to one of those
18 general ed classes they would have to go through the
19 crowded hallways and be in the regular Mendham High
20 School. Is that correct?

21 A Not necessarily, there are accommodations that you
22 can provide that allow you to avoid crowded hallways,
23 that was something we did all the time.

24 Q But the general ed classes that you had that
25 were offered would be AP level and higher level classes

1 they would be actual general ed classes.

2 A Correct.

3 Q Correct?

4 A Correct.

5 Q And it's your testimony that you did not
6 attend any of the IEP meetings prior to May 16, 2017.

7 Correct?

8 A I do not recall. I remember -- I remember one
9 meeting and then a mediation session, that's what I
10 recall.

11 Q And if I told you that one meeting was the
12 May 16, 2017 IEP meeting would that be correct?

13 A That would be correct.

14 Q And isn't it true that any other information
15 that you had regarding what did or did not occur at the
16 prior IEP meetings came from the members of the Child
17 Study Team because you did not attend any of the
18 meetings prior to May 16, 2017?

19 A I believe so.

20 Q And were you aware that the April 6, 2017 IEP
21 was the same IEP that was proposed at the April 6, 2017
22 meeting as well as the May 16, 2017 meeting?

23 A Yes.

24 Q Isn't it true that you asked my client at the
25 May 16, 2017 IEP meeting that -- if she had visited the

1 Purnell School?

2 A I do not recall.

3 Q Isn't it true that at the May 16, 2017 IEP
4 meeting you indicated to my clients to, "Go take a look
5 at the Purnell School, you know, that's one that's been
6 mentioned that, you know, I would definitely have to
7 look at?"

8 A So let me provide the context --

9 Q I'm just asking you to answer, did you say
10 that or not?

11 A No.

12 Q Isn't it true that at the May 16, 2017 IEP
13 meeting you indicated that you thought, "The Purnell
14 School had a peer group?"

15 A Yes.

16 Q Isn't it true that at the May 16, 2017 IEP
17 meeting when I asked you if the School District would
18 pay for the Purnell School you indicated, "Possibly, of
19 everything you mentioned that might be something we'll
20 talk about?"

21 A I do not recall.

22 Q Isn't it true that at the May 16, 2017 IEP
23 meeting you said that the Purnell School had a peer
24 group there and there are certain things there that the
25 others truly in your opinion did not offer?

1 A I do not recall.

2 MS. WARSHAW: Your Honor --

3 THE COURT: I'm listening.

4 MS. WARSHAW: -- I would like to -- I would
5 like to submit the recording of the May 16, 2017 IEP
6 meeting and if I need to play it for the witness I can
7 at some point as evidence that what he's testifying --

8 THE COURT: I've already listened to it.

9 MS. WARSHAW: Correct, you have.

10 THE COURT: I have. I really don't want to
11 play it here.

12 MS. WARSHAW: Okay.

13 THE COURT: I think it's going to take up time
14 and I --

15 MS. WARSHAW: I would like to offer it into
16 evidence then as P-50.

17 THE COURT: Do you have an objection?

18 MS. HOWLETT: So long as it's admitted in its
19 entirety.

20 THE COURT: In its entirety.

21 MS. HOWLETT: Yes, Your Honor.

22 THE COURT: Yeah.

23 MS. HOWLETT: No objection.

24 THE COURT: Okay. It's in.

25 MS. WARSHAW: Okay. Thank you.

1 THE COURT: Do we have -- is it marked?

2 MS. WARSHAW: My client sent you a copy --

3 THE COURT: I have it.

4 MS. WARSHAW: -- and it's P-50.

5 THE COURT: I have --

6 MS. WARSHAW: The CD.

7 THE COURT: The CD, so do you want to mark

8 that P-50?

9 MS. WARSHAW: Correct, Your Honor.

10 THE COURT: All right. P-50 is the IEP
11 meeting and it appears -- did you get the same copy,
12 because I listened to it and it does appear to be the
13 entire meeting?

14 MS. WARSHAW: Yes, it is.

15 MS. HOWLETT: Yes, Your Honor. And I note for
16 the record that that recording was not provided within
17 the "Five Day Rule". I was provided with the
18 evidentiary documents that were provided by the
19 Petitioners and it was provided subsequently in an
20 email, I did not receive a CD or any other like hard
21 copy version or a transcript or anything like that.

22 THE COURT: Noted.

23 MS. HOWLETT: Thank you.

24 MS. WARSHAW: Your Honor, just so the record
25 is clear that the District also tape recorded that

1 meeting.

2 THE COURT: I know.

3 MS. WARSHAW: She did receive a copy by a CD

4 and she --

5 THE COURT: That's why I had Diana ask you the

6 question --

7 MS. WARSHAW: I personally mailed it.

8 THE COURT: That's why I had Diana ask you the

9 question before I opened it.

10 MS. WARSHAW: Yes.

11 THE COURT: And by the way we're not allowed
12 to use media in our State provided computers so I have
13 and IT has a pending question, how am I supposed to
14 listen to it? I'm going to listen to it anyway but how
15 am I supposed to listen to it without getting into
16 trouble with Homeland Security?

17 MS. WARSHAW: Okay. Thank you.

18 THE COURT: All right.

19 MS. WARSHAW: So I'll let the record --

20 THE COURT: For the record, I'm going to let
21 it in. I understand your objection, you know, but our
22 Rules of Evidence are so lax that --

23 MS. HOWLETT: Understood, Your Honor, I have
24 to note it for the record.

25 THE COURT: -- anything goes and it is

1 relevant and since you were both there.

2 (P-50 Marked for
3 Identification and
4 Entered into
5 Evidence)

6 MS. WARSHAW: Okay. Thank you, Your Honor.

7 BY MS. WARSHAW:

8 Q Were you ever aware that at the April 6,
9 2017 IEP meeting my clients indicated that they did not
10 agree with the characterizations of some of the fact
11 set forth in the Psychological Evaluation conducted by
12 Ms. Wilk?

13 MS. HOWLETT: Your Honor, objection, Dr. Leigh
14 stated that he wasn't at the April meeting so he can't
15 possible testify as to what was said.

16 MS. WARSHAW: I'm not asking what he said, I'm
17 asking if he was aware of the fact that my clients
18 objected to it at that meeting. He indicated that he
19 spoke to --

20 THE COURT: He can answer --

21 MS. WARSHAW: -- the other Child Study Team
22 members.

23 THE COURT: He can answer that.

24 THE WITNESS: No.

25 BY MS. WARSHAW:

1 Q Isn't it true that at the May 16, 2017 IEP
2 meeting the parties, including Counsel, discussed the
3 issue that my clients did not agree with the
4 characterizations of some of the facts set forth in the
5 Psychological Evaluation Report conducted by Ms. Wilk?

6 A I do not recall.

7 Q Okay.

8 MS. WARSHAW: Again, Your Honor, I'm going to
9 refer to the recording, it speaks for itself.

10 THE COURT: It does.

11 BY MS. WARSHAW:

12 Q You were present at the May 16, 2017 IEP
13 meeting where my clients described their experience at
14 their visit to the Behavioral Support Program at the
15 Mendham High School. Correct?

16 A Correct.

17 Q You were present at the May 16, 2017 IEP
18 meeting where my clients described the reasons why they
19 felt that the Behavioral Support Program at the Mendham
20 High School would not be an appropriate placement for
21 J.H. Is that correct?

22 A Correct.

23 Q You were also present at that May 16, 2017
24 meeting but despite my clients expressing their
25 concerns with the Behavioral Support Program at the

1 Mendham High School these concerns were not added to
2 the proposed IEP. Is that correct?

3 A I do not recall.

4 Q Are you aware that Ms. Dickerson testified in
5 this case that she put the IEP together for the May 16,
6 2017 IEP meeting from the information provided to her
7 by the Child Study Team?

8 MS. HOWLETT: Your Honor, he wasn't here for
9 that testimony.

10 MS. WARSHAW: I'm asking if he was aware of
11 it.

12 THE COURT: I'm going to allow it.

13 THE WITNESS: I do not recall.

14 BY MS. WARSHAW:

15 Q Isn't it true that while you were the
16 Director of Special Services Ms. Dickerson had been on
17 maternity leave for a few months and therefore did not
18 have any contact with my clients to obtain their input
19 for formulating the IEP prior to the May 16, 2017 IEP
20 meeting?

21 A She was out for a few months, whether or not she
22 had input or not I do not know.

23 Q And the Child Study Team presented the
24 proposed IEP to my clients that was dated April 6, 2017
25 at the May 16, 2017 IEP meeting. Correct?

1 A Correct.

2 Q And isn't it true that no changes were made
3 to the proposed IEP at that meeting, the May 16, 2017
4 meeting, despite the concerns raised by my clients and
5 me?

6 A The proposed program continued to be the BSP at
7 Mendham.

8 Q But no changes were made to the
9 characterizations or the errors in the Psychological
10 Evaluation by Ms. Wilk either. Correct?

11 A No changes were made to the Psychological.

12 Q And my clients concerns were not added to the
13 IEP. Is that correct?

14 A I do not know.

15 Q And the IEP that was formulated on April 6,
16 2017 was presented to my clients both at that meeting
17 as well as the May 16, 2017 meeting without their
18 input. Is that correct?

19 A I do not know.

20 Q I'm going to show you what's been marked
21 P-26.

22 THE COURT: That's the other books.

23 BY MS. WARSHAW:

24 Q And I think it's also --

25 MS. HOWLETT: I believe it's R-10 -- (out of

1 microphone range)

2 MS. WARSHAW: It's R-10?

3 MS. HOWLETT: Yeah.

4 MS. WARSHAW: Okay. Let's see if we can keep
5 it in -- (out of microphone range)

6 THE COURT: Weren't you guys supposed to
7 confer? I actually put the word "Shall" into the
8 Order. R-10. Well, you know, I say that because I'm
9 often -- I'm often admonished by Counsel because I
10 don't comply with my own order and yet neither to
11 Counsel.

12 MS. WARSHAW: We'll get to that, Your Honor.

13 THE COURT: It's a quandary.

14 MS. WARSHAW: We'll get to that.

15 THE COURT: So we're on R-10.

16 MS. WARSHAW: Your Honor, R-10 there --

17 THE COURT: Is the Draft IEP.

18 MS. WARSHAW: Correct, except then that is --
19 that is numbered 1 through 22.

20 THE COURT: Right.

21 MS. WARSHAW: Okay. We're going to refer to I
22 think P-26 because that's not necessarily the same.

23 THE COURT: No, it's different.

24 MS. WARSHAW: Correct.

25 THE COURT: How did that happen, did you

1 figure it out yet?

2 MS. WARSHAW: Yes.

3 THE COURT: You did?

4 MS. WARSHAW: Yes, I did. The one that is 1
5 through 20 is the IEP that was presented to my clients
6 April 6, 2017.

7 THE COURT: Okay.

8 MS. WARSHAW: The one that's marked, "Draft,"
9 which now has Kendra Dickerson as the Case Manager as
10 opposed to Sherry Wilk.

11 THE COURT: Well, the ones I have -- you said
12 R-10 and R-26 (sic) both say, "Draft."

13 MS. WARSHAW: Okay. If you take R-20 -- if
14 you take P-26 --

15 THE COURT: Oh, is it that --

16 MS. WARSHAW: It's behind it, there's both of
17 them there. They should be, at least the first two
18 pages will be there and P-26.

19 THE COURT: I got it.

20 MS. WARSHAW: You got it. So the P-26 the
21 difference is --

22 THE COURT: That they changed -- the numbers
23 changed.

24 MS. WARSHAW: The numbers changed and 1
25 through 20 had Sherry Wilk listed as the Case Manager

1 during the time that Kendra was --

2 THE COURT: She was on vacation.

3 MS. WARSHAW: -- on maternity leave.

4 THE COURT: On maternity leave, that's not a
5 vacation.

6 MS. WARSHAW: 1 through 22 now says, "Draft,"
7 on it, I don't know who wrote that but it says,
8 "Draft," on it.

9 THE COURT: But didn't -- I think we
10 established that.

11 MS. WARSHAW: That that was Kendra Dickerson?

12 THE COURT: I think we established that who --
13 that she wrote "Draft" on it.

14 MS. WARSHAW: No, I don't think we did.

15 THE COURT: Okay.

16 MS. WARSHAW: Okay. So, okay, I'll try to use
17 -- okay, I'm going to refer you to R-10 on page 3/20.

18 BY MS. WARSHAW:

19 Q Okay. I'm showing you what's been marked R-10
20 on page 3/20 with the heading, "Present Levels of
21 Academic Achievement and Functional Performance."

22 MS. HOWLETT: I believe that's marked 3 of 22
23 in R-10.

24 MS. WARSHAW: Oh, okay. Mine is 3 of 20.
25 Okay.

1 THE WITNESS: Okay.

2 BY MS. WARSHAW:

3 Q Under the section it says, "Describe the
4 concerns of the parents." Do you see that section?

5 A I do.

6 Q Okay. There is no mention in that section of
7 my clients concerns with the Behavior Support Program
8 at the Mendham High School. Is that correct?

9 A That's correct.

10 Q In that same section there is no mention of
11 the out of District placements that my clients were
12 consider -- were discussing. Is that correct?

13 A Correct.

14 Q And in that same section there is no mention
15 of my clients going to see other schools such as the
16 Purnell School. Is that correct?

17 A Correct.

18 Q Okay.

19 THE COURT: I'm going to ask you a question,
20 why would that be in an IEP?

21 THE WITNESS: It wouldn't be in that section.

22 THE COURT: Okay. Go.

23 BY MS. WARSHAW:

24 Q Well, it talks about the concerns of the
25 parents. If the parents are included as members of the

1 Child Study Team their concerns and their issues with
2 regard to the IEP are typically put into this section
3 or another section of the IEP. Isn't that correct?

4 A But not the options considered and rejected. So
5 the options that we look at, whatever they are, if
6 they're considered and rejected they don't go in that
7 section. What we would talk about in that section are
8 the concerns and this was the synopsis provided by Ms.
9 Dickerson, this is how she captured the wording of how
10 she interpreted the concerns.

11 Q But she wasn't at the April 6, 2017 IEP
12 meeting. Correct?

13 A I don't recall.

14 Q And so if my clients had expressed concerns
15 at the April 6, 2017 IEP meeting their concerns should
16 have been reflected in this section called, "Describe
17 the concerns of the parent." Isn't that correct?

18 A This is the section to capture the concerns.

19 Q So, again, if my clients had expressed
20 concerns both at the April 6, 2017 IEP meeting as well
21 as the May 16th IEP meeting their concerns should have
22 been expressed in this section. Isn't that correct?

23 A This is where the concerns are expressed.

24 Q Isn't it true that J.H. did not have any
25 issues with completing her work on home instruction,

1 her homework or her studies?

2 A I don't have a specific detail on that. I do
3 recall that the documentation from ICCPC was describing
4 that she was struggling to be productive, so whether
5 that carried over into the one on one with the home
6 instruction, it may or may not have occurred.

7 Sometimes we do see that when students are working
8 one to one and in tutoring they are able to produce
9 more effectively than when they're in that classroom
10 setting.

11 Q And when J.H. was on home instruction she got
12 good grades. Isn't that correct?

13 A I do not know.

14 Q I'm going to refer you to page 19 of 22 --

15 A Is that the same document?

16 Q You have 1 through 22. Correct? It should
17 be 19/22.

18 A I'm not seeing anything that says 19/22.

19 THE COURT: It would be in the --

20 MS. WARSHAW: The bottom corner.

21 THE COURT: -- in the black binder, R-10.

22 MS. HOWLETT: What page was that?

23 MS. WARSHAW: 19/22.

24 THE WITNESS: What's the heading at the top of
25 the page?

1 BY MS. WARSHAW:

2 Q "Rational for removal from General
3 Education."

4 A Okay.

5 Q Okay. You testified that the Teachers at the
6 Behavioral Support Program at Mendham High School were
7 Special Education Teachers. Is that correct?

8 A Yes.

9 Q They are not General Education Teachers.
10 Correct?

11 A Yes, correct.

12 Q And referring to R-10 page 19/22 in the
13 middle of the page it says, "A reward system focusing
14 on positive behavior support is also used to help
15 foster social connections and encourage academic
16 motivation." Is that correct? Would you say that's an
17 accurate account of what the Behavior Support Program
18 is about?

19 A It's a part of what it does, yes.

20 Q And in the Behavior Support Program there
21 are rewards for, "Showing up to school." Is that
22 correct?

23 A You earn points by being there.

24 Q And you earn points by, "Being alert in
25 school. Is that correct?

1 A Yes.

2 Q And is it fair to say that there is a
3 difference between school refusal and school related
4 anxiety?

5 A Well, school related anxiety is a broader category
6 and it can lead to school refusal.

7 Q I'm going to show you what's been marked
8 R-14, have you ever seen this letter before?

9 A Yes.

10 Q Where you aware that this letter indicated
11 that J.H.'s Counselor and Psychiatrist recommended a
12 504 Plan for J.H. due to her extreme anxiety regarding
13 school?

14 A I certainly recall seeing -- I recall seeing his
15 letter so, yes.

16 Q I'm going to show you R-15 and, again, you
17 were aware that Melissa Dolgos and Dr. Srinivasan
18 (phonetic) were treating J-H. Is that correct?

19 A Yes.

20 Q And isn't it true that this letter on the
21 sixth line down indicates that, "J.H.'s anxiety has
22 prevented her from being able to attend a regular high
23 school as she feels judged, pressured and scared?"

24 A That is what it says.

25 Q And Mendham High School is a regular high

1 school. Isn't that correct?

2 A Yes, it is.

3 Q And both of these letters were available to
4 the Child Study Team prior to formulating the April 6,
5 2017 IEP. Is that correct?

6 A Yes.

7 Q I'm going to refer you to R-17 and you've
8 seen this report from Dr. Srinivasan before. Is that
9 correct?

10 A That is correct.

11 Q And what is the date on this letter?

12 A "March 15, 2017."

13 Q And this letter indicates that on the -- on
14 the third page that Dr. Srinivasan recommended an, "Out
15 of District placement." Is that correct?

16 A On the third page?

17 Q Under, "Recommendations."

18 A That is correct.

19 Q And this report was also available to the
20 Child Study Team prior to the April 6, 2017 IEP
21 meeting. Correct?

22 A That is correct.

23 Q And these were also available prior to the
24 May 16, 2017 IEP meeting. Is that correct?

25 A Correct.

1 Q Okay. I'm going to refer you back to R-10,
2 the same page we were on where it said, "Parent
3 concerns," it should be 3 of 22. Do you have that
4 page?

5 A Yes.

6 Q Okay.

7 THE COURT: I'm sorry, which page are we on?

8 MS. WARSHAW: 3 of 22, 3/22.

9 THE COURT: Thanks.

10 MS. WARSHAW: It's the same page we were on
11 before the, "Present Levels of Academic Achievement and
12 Functional Performance."

13 BY MS. WARSHAW:

14 Q In the first section it says, "Consider
15 relevant data and list the sources used to develop this
16 IEP." Do you see that section?

17 A Yes.

18 Q Does it say anywhere in that section anything
19 about the three letters that we just talked about from
20 Dr. Srinivasan and Melissa Dolgos?

21 A It does not.

22 Q So is it fair to say that if it's not listed
23 in that section these letters were not considered in
24 the development of this IEP?

25 A Actually not. It refers to, "Recent evaluation,"

1 and while that's global that can certainly include all
2 sources including letters that are coming in from
3 outside sources that are evaluative in nature.

4 Q Do you know for a fact that these three
5 letters were considered in determining this April 6,
6 2017 IEP?

7 A Yes.

8 Q Did you personally consider these three
9 letters from J.H. treating Physician and her Counselor
10 when determining this April 6, 2017 IEP?

11 A Yes.

12 Q And in the Parent Concerns section isn't it
13 correct that we had a discussion about classifying J.H.
14 as Other Health Impaired at the May 16, 2017 IEP
15 meeting?

16 A I do not recall.

17 Q Okay.

18 MS. WARSHAW: Again, Your Honor, I refer to
19 P-50 --

20 THE COURT: Hm-hm.

21 MS. WARSHAW: -- for clarification.

22 BY MS. WARSHAW:

23 Q Is it fair to say that the proposed IEP
24 presented to my clients at the May 16, 2017 IEP meeting
25 was a final IEP and no changes were made to that IEP?

1 A I don't -- I do not believe that changes were made
2 to that IEP.

3 Q Were you ever aware that my clients did not
4 sign the April 6, 2017 IEP?

5 A Yes.

6 Q Okay. I'm going to show you R-16 and you
7 testified before that you've seen this before.
8 Correct?

9 A Correct.

10 Q And you see the heading on this report, it
11 says, "Clifton Public Schools." Is that correct?

12 A That is correct.

13 Q And that is actually a mistake because Ms.
14 Wilk was working for the West Morris Regional High
15 School District. Isn't that correct?

16 A That is correct.

17 Q So that's a typo would you say on that
18 report?

19 A It is.

20 Q And at the time that the May -- the April 6,
21 2017 IEP was presented to my clients at the May 16,
22 2017 IEP meeting you were aware that my clients
23 disputed the wording and characterizations within Ms.
24 Wilk's Report. Is that correct?

25 A I do not recall.

1 Q And you don't recall at the May 16, 2017 IEP
2 meeting we had a discussion about the characterizations
3 and the errors in this report.

4 A I do not recall.

5 Q So to your knowledge no corrections were made
6 to Ms. Wilk's Report.

7 A To my knowledge.

8 Q And were you aware that Ms. Wilk found in her
9 report that J.H. scored in the "Low Average" range for,
10 "Working Memory?"

11 A Yes.

12 Q And were you also aware that J.H. scored in
13 the "Low Average" range for, "Block Design?"

14 A Yes.

15 Q Were you aware that J.H. scored in the "Low
16 Average" range for, "Matrix Reasoning?"

17 A Yes.

18 Q And were you aware that J.H. scored in the
19 "Low Average" range in, "Digital Span?"

20 A If it's in this report then I'm aware.

21 Q So you're also aware that J.H. scored in the
22 "Low Average" range for, "Arithmetic?"

23 A It's in the report, yes.

24 Q And the same with, "Symbol Search," she
25 scored in the "Low Average" range.

1 A "Symbol Search," yes.

2 Q And were you also aware in that report it
3 indicates that J.H. scored in the "Low Average" range
4 for her ability to, "Sustain attention, concentration
5 and exert mental control?"

6 A Yes, that would be referring back to the Digit
7 Span score.

8 Q And her -- and J.H. was found to have a,
9 "Processing Speed," of only in the, "34th," percentile.
10 Is that correct?

11 A Correct.

12 Q Isn't it true that J.H. had school related
13 anxiety and not school avoidance or school refusal?

14 A Again, she had school related anxiety and she also
15 had school refusal, she did not come to school.

16 Q And is it your opinion that J.H. did not come
17 to school because it was intentional and she was
18 purposely not going to school?

19 A She was not coming to school, I mean, that's the
20 bottom line. She was not coming to school and
21 obviously the evaluations indicate that she had
22 anxiety, she had depression and she was really
23 struggling.

24 Q And to your knowledge isn't it true that Ms.
25 Wilk had no supporting documentation to make a

1 statement in her report that J.H., "Sometimes threatens
2 to hurt others?"

3 MS. HOWLETT: Your Honor -- (out of microphone
4 range)

5 THE WITNESS: I cannot speak to that.

6 THE COURT: Yeah, he can't. Sustained.

7 MS. WARSHAW: If it's within his knowledge,
8 that's all I'm asking for.

9 THE WITNESS: It's not within my knowledge.

10 MS. WARSHAW: Okay.

11 BY MS. WARSHAW:

12 Q Were you aware that Ms. Wilk refused to
13 change this statement in her report even though it was
14 not true?

15 A I have no knowledge of that.

16 Q Were you aware that in the April 6, 2007
17 (sic) IEP if J.H. -- if the Behavior Support Program
18 did not offer advance classes for her she could have
19 home instruction on those classes?

20 A I was not at that meeting.

21 MS. WARSHAW: Can I have one moment with my
22 clients?

23 THE COURT: Sure.

24 MS. WARSHAW: Okay.

25 BY MS. WARSHAW:

1 Q Dr. Leigh, are you aware that Ms. Costa
2 testified earlier that in the event a student needed a
3 higher level class that they would have to go to the
4 general ed setting when they were in the Behavior
5 Support Program at the Mendham High School?

6 A So I'm not aware of her testimony or specifically
7 what she said or how she characterized that.

8 Q It was your testimony that if a student who
9 was academically capable and they wanted to take higher
10 level classes that those classes would be offered in
11 the general education setting. Isn't that correct?

12 A That is not correct.

13 Q Isn't that what you said at the May 16, 2017
14 IEP meeting?

15 A I did not say that. What I could have said was
16 for students that are at the academic advanced level we
17 will challenge them, we will differentiate, that's what
18 we do. For somebody who is at AP or IB level that
19 would be something that we would need to find a
20 different way of offering, that could be done online or
21 they would go to the gen ed setting.

22 We were always very creative in what we did, we
23 would tailor our programs individually based on need
24 and what I recall saying was if there is a class that
25 isn't going to be a good fit through the BSP we would

1 provide it through a one on one experience.

2 Q In the Behavior Support Program at the
3 Mendham High School is a self-contained behavioral
4 program. Correct?

5 A It's a self-contained program for students with
6 emotional and psychiatric conditions.

7 MS. WARSHAW: I'm sorry, Your Honor, I just
8 have to find something.

9 THE COURT: Hm-hm.

10 BY MS. WARSHAW:

11 Q Dr. Leigh, isn't it true that the Behavior
12 Support Program is described as, "To address the needs
13 of disaffected and at risk students?"

14 A That may be part of the description.

15 Q I'm going to refer you back to -- what's the
16 number, R-12. Under, "Target Population," can you read
17 the first sentence, please?

18 A "The BSP is for students in grades 9 to 12 who are
19 manifesting anxiety, depression, OCD, school avoidance,
20 social challenges, disruptive behaviors and academic
21 underachievement due to lack of productivity and follow
22 through."

23 Q And to your knowledge J.H. never had
24 disruptive behaviors in school. Correct?

25 A Correct.

1 Q And she was not an academic underachiever.

2 Is that correct?

3 A I think it would depend on when you were taking a
4 look at her academic performance. During the time when
5 she was out of school her productivity I'm sure went
6 down for a period of time. She, I do believe, was
7 working well with the home instructors, but I don't
8 believe that part of her profile was that she was an
9 academic underachiever.

10 Q Can you describe for me what is meant by a,
11 "Disaffected learner?"

12 A A disaffected learner is somebody who is not
13 engaged with the content to the extent that we would
14 like them to be, they are less interested and they are
15 in a sense not performing to potential academically.

16 MS. WARSHAW: Okay. No further questions.
17 Thank you.

18 THE COURT: Redirect?

19 MS. HOWLETT: Just -- just a few.

20 REDIRECT EXAMINATION BY MS. HOWLETT:

21 Q While you're on R-12, Dr. Leigh --

22 A Yeah.

23 Q -- in that description of the, "Target
24 Population," to your recollection did J.H. manifest
25 anxiety?

1 A Yes.

2 Q Depression?

3 A Yes.

4 Q School avoidance in some form?

5 A Yes.

6 Q And can you clear up the Mendham High School
7 Program -- the name of the Mendham High School Program,
8 what is the name of the Mendham High School Program?

9 A It's the Being Successful Program. So a year into
10 the program we got together, myself and the staff and
11 we actually opened up to the students and got their
12 input as well, because we wanted a different kind of
13 feel to the program, a different connotation.

14 The BSP, everybody always referred to it and still
15 do as "BSP", but the notion really was that this was a
16 distinct program from the one at Central and we wanted
17 an acronym that would more appropriately capture what
18 was happening there so we came up with Being
19 Successful.

20 Q And regardless of the name, can you talk
21 about the distinction between the program at Central
22 and the program at Mendham?

23 A Yeah, I would say that the distinction is that the
24 program at Mendham is a more comprehensive program, the
25 one at Central I view as more part-time and I think

1 through the years probably it was taking on a more a
2 student where there were more behavioral issues in
3 nature and maybe more of that disaffected learner.

4 Over at Mendham it really was evolving into the
5 program that was taking students more with the anxiety
6 and depression and the combination of the two.

7 Students who had been in and out of hospital settings,
8 intensive outpatient programs, students with more clear
9 cut psychiatric conditions impacting school attendance
10 and learning.

11 Q Okay. Going to the May meeting when the
12 Purnell School was brought up, when Counsel had asked
13 you a question about that and you said that there was
14 some context involving your mention of Purnell School,
15 can you describe what you mean by that?

16 A Sure. So when they had asked for, you know, what
17 are some programs and if not BSP or if BSP didn't work
18 I floated a few programs such as Homestead and
19 Hunterdon Prep and then asked what programs are you on
20 your side looking at and there were three that came up.

21 One was Fusion, Fusion is a one to one program,
22 it's not approved as a therapeutic school, you're with
23 a Teacher for each of the content areas. The other was
24 the FlexSchool, I really didn't know much about that,
25 it's fairly new, I believe it's been around since 2013.

1 It's a twice exceptional school for both gifted
2 learners, a 120 IQ and above, and some other exception
3 that you have.

4 And then the third one was Purnell and what I said
5 at that point was of the three -- because I certainly
6 don't endorse one to one learning, I don't think that
7 prepares you for the real world and twice exceptional,
8 that's not what the record was showing, and of the
9 three at least Purnell offered a peer group.

10 It is a school, it's not a therapeutic school,
11 it's not what I was recommending, it was not what was
12 being proposed, but it's a school and if the family was
13 going to be choosing to not work under our least
14 restrictive environment and our process and was going
15 to go an invest funds at least it was a school, and
16 that was the context under which that statement was
17 made.

18 Q Thank you, Dr. Leigh, I just have a couple of
19 quick questions. You testified earlier that you
20 weren't at that April meeting, did the Child Study Team
21 report to you why that meeting had been terminated? Do
22 you recall?

23 A I do not recall.

24 Q Okay. Was the May IEP meeting a continuation
25 of the April meeting or was it --

1 A Yes.

2 Q If you could just turn to something real
3 quick for me, R-10, that's the IEP that we've been
4 using today.

5 A Yeah.

6 MS. HOWLETT: Should we remove R-10, I know
7 it's duplicative, Your Honor, or would you just rather
8 stick with P-26 or 29?

9 THE COURT: Actually R-10 doesn't have the
10 second -- the first two pages so --

11 MS. HOWLETT: Okay. P-26?

12 THE COURT: It's a little confusing in terms
13 of the numbering but I think we'll -- P-26 is in and
14 we'll move R-10 in as well. I don't -- it doesn't --

15 (R-10 Entered into
16 Evidence)

17 MS. HOWLETT: Thank you, Your Honor.

18 BY MS. HOWLETT:

19 Q So, Dr. Leigh, if you could just turn to tab
20 10 and then on the bottom marked WM-034 and on this
21 page there's a section that says, "Describe any options
22 considered and the reason those options were rejected."
23 Is this the section of the IEP where you would list
24 other considerations?

25 A Yes.

1 Q And can you just read that -- because it's
2 short I'll have you read it, just that short paragraph
3 that's in there -- in that box, please?

4 A Sure. "Mr. and Mrs. H. requested that J. be
5 allowed to attend the Fusion Academy, a private
6 alternative high school for students that is not a New
7 Jersey approved special education program. This option
8 was rejected by the District as it offers students a
9 one to one learning experience which is highly
10 restrictive, additionally this program does not offer
11 therapeutic support on campus."

12 Q And then in that same if you could flip
13 backwards to the page that's marked WM-026 and this
14 page is entitled, "Behavioral Interventions." What do
15 you use this page for in an IEP?

16 A So if there is a specific behavior that is in any
17 way impacting or impeding learning we would create some
18 type of intervention.

19 Q And for J.H. there's a, "Target behavior,"
20 listed on this page, can you tell us what that target
21 behavior is?

22 A "School attendance."

23 Q And then you spoke earlier about -- kind of
24 at length actually about the positive behavioral
25 supports and the BSP, so how do behavioral supports

1 assist a student that's having school attendance
2 issues?

3 A Right. So a student who is having trouble getting
4 to school is their emotions are overwhelming them in a
5 way where the most important piece of school -- you
6 can't access an education if you're not there, so it's
7 literally the most important behavior so we have to
8 create an environment that supports their wanting to be
9 there.

10 So being there is number one and them being there
11 has to result in them being recognized for that because
12 that's a big step for them when they've had a pattern
13 of having struggled with that so that's why it is part
14 of the point system, the recognition of it, and why it
15 leads to participation in certain field trips that are
16 offered to the students.

17 Again, those field trips were rewards and it's
18 also for bonding because they are struggling in that
19 much larger context and many times that's them feeling
20 socially isolated or alienated. So this is more of a
21 family experience and a bonding experience and those
22 reinforcers are used to support -- those positive
23 behavioral supports are used to support important
24 behaviors and really an incredibly important one which
25 is school attendance.

1 Q And then can you -- thank you, Dr. Leigh.

2 Can you just flip to the tab marked 15 that Counsel
3 asked you about before, it was a letter from ICCPC.

4 A Yes.

5 Q And could you just read it's like the third
6 to the last sentence that says, "She would greatly?"

7 A Yes, "She would greatly benefit from more time in
8 a therapeutic setting to continue progressing with her
9 anxiety, depression and function in school."

10 Q And would you describe the BSP as a
11 therapeutic setting?

12 A Yes.

13 Q And then R-17 or tab 17, I'm sorry, this is
14 Dr. -- I'm not going to be able to say her name
15 correctly, Srinivasan, she made a recommendation that
16 Counsel asked you about before, "At this time an out of
17 District placement is advised." Did Dr. Srinivasan
18 ever come and visit the BSP?

19 A No.

20 Q And I just -- (out of microphone range)

21 MS. HOWLETT: No further questions, Your
22 Honor.

23 THE COURT: Recross?

24 MS. WARSHAW: Yeah.

25 RE CROSS EXAMINATION BY MS. WARSHAW:

1 Q Dr. Leigh, were you ever made aware that J.H.
2 was diagnosed with a, "Specific Learning Disability?"

3 A No.

4 THE COURT: Aren't we a little bit outside the
5 scope of direct, that wasn't even brought up?

6 MS. WARSHAW: Okay.

7 BY MS. WARSHAW:

8 Q You had testified that there is a point
9 system in the BSP Program, isn't it true that if the
10 students do not earn a certain number of points they
11 are not permitted to attend the field trips?

12 A Yes.

13 Q And when you mentioned the Purnell School at
14 the May 16, 2017 IEP meeting you were aware that they
15 have a full-time Counselor in that program. Is that
16 correct?

17 A No.

18 Q So you're not aware that they also have a
19 Psychologist -- (out of microphone range)

20 A I was not aware -- I was not aware at that
21 meeting.

22 Q But you've sent other students to the Purnell
23 School prior to this, isn't that correct, so you're
24 aware of what they have at the Purnell School?

25 A I am not very -- I know what the Purnell School is

1 about, I know the gist of it, it's for students with
2 learning differences, that's really who they target,
3 it's not a therapeutic school.

4 MS. WARSHAW: No further questions.

5 THE COURT: You can step down. Thank you very
6 much, Doctor.

7 THE WITNESS: Thank you.

8 MS. HOWLETT: Your Honor, upon reflection our
9 next witness will probably be redundant testimony so
10 we're actually preferring not to call her --

11 THE COURT: Okay.

12 MS. HOWLETT: -- and rest at this time.

13 THE COURT: Okay.

14 MS. HOWLETT: Thank you, Your Honor. Can we
15 just let her know?

16 THE COURT: That would be a good idea.

17 MS. HOWLETT: Yeah, she -- (out of microphone
18 range)

19 THE COURT: All right. We'll take a five
20 minute break as well.

21 MS. HOWLETT: All right. Thank you, Your
22 Honor.

23 (BRIEF RECESS)

24 THE COURT: All right. Let's go back on the
25 record.

1 MS. WARSHAW: Your Honor, first we're going to
2 make a motion for a directed verdict because --

3 THE COURT: Denied -- (laughter)

4 MS. WARSHAW: I thought you would, but I have
5 to put it on the record.

6 THE COURT: I don't think -- I don't think our
7 rules allow for that.

8 MS. WARSHAW: Yes, they do.

9 THE COURT: They do?

10 MS. WARSHAW: Yes.

11 THE COURT: Could you point it out to me
12 because I read them like -- I read them all the time --

13 MS. WARSHAW: Yeah.

14 THE COURT: -- and I never saw that? Anyway,
15 denied -- (laughter)

16 MS. WARSHAW: Okay. You don't even want to
17 hear my arguments?

18 THE COURT: No, and no disrespect meant but at
19 this point the School District has certainly met its
20 burden.

21 MS. WARSHAW: Okay. We're going to call Mr.
22 H.

23 MR. H.: Should I bring this up -- (out of
24 microphone range)

25 MS. WARSHAW: Yes.

Colloquy / F.H. - Direct

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1 THE COURT: Good morning.

2 MR. H.: Good morning.

3 THE COURT: You know the drill -- (laughter)

4 MR. H.: Yes, sir.

5 THE COURT: Raise your right hand, please.

6 F. H., PETITIONER SWORN.

7 THE WITNESS: I do.

8 THE COURT: Thank you. State your name and
9 spell your last name, please.

10 THE WITNESS: F.C.H. -- (the Petitioner states
11 and spells his last name for the record)

12 THE COURT: Proceed.

13 MS. WARSHAW: How do you want to proceed with
14 the names, do you want initials as well?

15 THE COURT: Well, he just put his name on the
16 record.

17 MS. WARSHAW: I know.

18 THE COURT: And the transcriber -- they always
19 refer to them by initials anyway.

20 MS. WARSHAW: Okay. As long as it's
21 transcribed that way.

22 THE COURT: And for the transcriber, use F.H.
23 -- (laughter)

24 MS. WARSHAW: Okay.

25 DIRECT EXAMINATION BY MS. WARSHAW:

1 Q Can you tell us where you're employed?

2 A I work for the NASDAQ Stock Exchange in New York
3 City.

4 Q Okay. And your daughter for purposes of the
5 record is J.H. Is that correct?

6 A Correct.

7 Q Okay. What school did J.H. attend for middle
8 school?

9 A The Long Valley Middle School.

10 Q Okay. Can you describe for the Court what
11 your daughter's experience was in middle school in the
12 public school district?

13 A Well, in middle school she had kind of a rough
14 time, she was starting to feel a little depressed, she
15 was struggling a bit, and she had a couple of Teachers
16 that didn't help her along. She had a Spanish Teacher
17 and an English Teacher that kind of she felt were
18 bullying her and making it difficult for her.

19 Q Was she a good student academically?

20 A Yes.

21 Q And when you say that, "She was struggling,"
22 what do you mean by that?

23 A I mean emotionally, you know, I think this is
24 where the anxiety and depression was starting to creep
25 in although it wasn't always obvious to us, the

1 parents.

2 Q Did you at any point during middle school
3 request that your daughter be evaluated by the Child
4 Study Team?

5 A No.

6 Q Okay. Any reason why?

7 A Well, she was doing well academically and
8 emotionally, although she -- you know, we could tell
9 that she was having problems, she seemed to be holding
10 it together and we felt that when she left the middle
11 school and got in the high school a new environment
12 would -- would help her out.

13 Q Can you describe for us what you observed
14 with J.H. regarding school when she entered ninth
15 grade?

16 A Ninth grade, in ninth grade again she was doing
17 well academically. She was, you know, active in school
18 and seemed to be having some again difficulties but
19 again nothing that we thought was anything serious.

20 Q Was she having difficulties in any areas
21 other than school?

22 A With friends she was -- she was having some issues
23 keeping and holding friends.

24 Q Starting in tenth grade do you -- can you
25 describe for the Court what happened at the beginning

1 of tenth grade?

2 A In the beginning of tenth grade she started out
3 and she started being very anxious and depressed and I
4 think having panic attacks, I believe my wife brought
5 her home from school a couple of times, and finally in
6 the beginning of October she felt she could no longer
7 go to school because of her anxiety.

8 Q And what about her anxiety prevented her from
9 getting into the school?

10 A It was just this overwhelming feeling of walking
11 in the door of that big school that triggered something
12 inside her that made it -- it just kind of crushed her
13 and that she couldn't be in there.

14 Q Outside of school in tenth grade did she have
15 this overwhelming feeling that she couldn't walk into
16 places or was it just related to this school?

17 A Just the school.

18 Q And you mentioned it was a, "Big school," was
19 there any other qualities about the school that caused
20 her to get anxious?

21 A Yes, I believe, you know, the hallways were
22 crowded, for lunch there often wasn't enough seating
23 for the students so they would sit along the lockers
24 and eat lunch in the hallway and so it was just very --
25 it was just very busy and very noisy.

1 Q Did there come a time when J.H. attended a
2 therapeutic day program?

3 A Yes.

4 Q Can you tell me what happened with regard to
5 that program?

6 A After we realized that J. was having trouble going
7 back to school we looked around for several options as
8 to what we could possibly do for her and we were told
9 about this therapeutic day program called the, "ICCPC,"
10 and we took J. there to talk to a Psychiatrist and
11 Counselor and they recommended that she come there as
12 part of a therapeutic program that would be helpful to
13 her to get her back to high school after a certain
14 time.

15 Q And how long did she attend that program?

16 A I believe that was from the end of October through
17 the beginning of December.

18 Q And do you recall if at any time in October
19 you notified the School District that there were issues
20 with J.H.?

21 A Yes, definitely right away after she told us she
22 couldn't, you know, go to the school we were on the
23 phone to the Guidance Counselor and, you know, getting
24 in touch with the Teachers to let them know what the
25 situation was.

1 Q I'm going to show you what's been marked
2 P-12. Do you recognize this?

3 A Yes.

4 Q And who wrote this letter?

5 A My wife and I sent this to Mr. Cusack who was
6 J.'s Guidance Counselor.

7 Q Okay. And at this point in this letter are
8 you requesting a, "Home tutor?"

9 A Yes. This was in the very beginning before we had
10 talked to the ICCPC and we -- in talking with Mr.
11 Cusack on the phone we felt that a home tutor would
12 help us out until we got things straightened out.

13 MS. WARSHAW: Your Honor, I would like to move
14 that into evidence.

15 MS. HOWLETT: It's already moved as R -- (out
16 of microphone range) R-39.

17 MS. WARSHAW: Okay.

18 BY MS. WARSHAW:

19 Q I'm going to refer you to P-13, which is also
20 P -- or also R-40 and I believe that's already in
21 evidence. Do you recognize this letter?

22 A Yes.

23 Q And who is this letter from?

24 A This is from J.'s Pediatrician, at Family -- Plaza
25 Family Care, it is written to explain that she is --

1 she has looked at J. and she -- and it would be best if
2 she did not attend school but had home bound
3 instruction because of her depression and anxiety.

4 Q I'm going to refer you to P-14, have you ever
5 seen this before?

6 A Yes.

7 Q And can you describe what this is?

8 A This is a letter to J.'s Guidance Counselor and to
9 the Assistant Principal of the school, it is talking
10 about J. entering the ICCPC and that she would have
11 tutoring in the second of the day and in the first half
12 of the day she would get therapeutic instruction -- or
13 help and it's saying that we would not need the home
14 tutors that we had requested because tutoring was going
15 to be provided by the ICCPC in conjunction with the
16 school.

17 A And who was this email sent to Mr. Broad
18 (phonetic) and Mr. Cusack.

19 Q Both from the School District.

20 A Yes.

21 Q And what is the date of this email?

22 A Is, "October 15, 2016."

23 MS. WARSHAW: Your Honor, I would like to move
24 this into evidence.

25 MS. HOWLETT: I think that was already moved

1 this morning.

2 THE COURT: Me too, that was one of the things
3 you brought up when we were off the record.

4 MS. WARSHAW: Oh, okay. Good. Okay.

5 BY MS. WARSHAW:

6 Q I'm going to refer you to P-15 and we had
7 discussed this letter before. Are you aware of this
8 letter?

9 A Yes.

10 Q Okay. And this was also sent to the West
11 Morris High School.

12 A Correct.

13 Q Okay. I'm going to show you what's been
14 marked P-17, which I believe is also R-1. Do you
15 recognize this document?

16 A Yes.

17 Q And this document was put into place when and
18 for what reason?

19 A This was put into place in the beginning of
20 December when J. was going back to school after being
21 at the ICCPC for a while. It was felt that she could
22 try and attend school again and we had asked for a 504
23 Plan for her to help in that transition back to school.

24 Q And when J.H. tried to return back to school
25 when was that time frame?

1 A That would have been right around December 6th I
2 believe that she went back to school.

3 Q And what happened?

4 A Well, she was just supposed to go for two half
5 days -- or for half days for that week and she was able
6 to make it through two days and then the anxiety and
7 depression again got the best of her and she couldn't
8 -- she couldn't return.

9 Q And do you know what about going back to
10 school sparked that, her anxiety?

11 A I think it was just -- well, I don't know just, I
12 don't even think she really knows exactly what it was,
13 but certainly it was -- it was the impact of walking
14 into that school and into that big environment that
15 certainly triggered her problems.

16 MS. HOWLETT: Your Honor, is the witness
17 testifying from his own personal knowledge?

18 THE COURT: Yeah, I was just going to say if
19 you don't know, you don't know.

20 THE WITNESS: Okay.

21 THE COURT: And you kind of hinted you didn't
22 really know and I don't think --

23 THE WITNESS: I'm sorry.

24 THE COURT: -- I don't think J. knows.

25 THE WITNESS: Yeah, I don't.

1 THE COURT: You know, at least at this point I
2 don't think she knows.

3 BY MS. WARSHAW:

4 Q I'm going to show you what's been marked
5 P-19.

6 A P-19.

7 Q Following J.H. -- her return for two days to
8 school, what happened after that?

9 A We were in touch with Mr. Cusack to inform him of
10 what had happened and we then decided to request a
11 Child Study Team and an eval -- an IEP evaluation for
12 her and this is our formal request for that as well as
13 for her to receive home instruction while that was all
14 being taken care of.

15 MS. WARSHAW: I'm not sure if this is in or
16 not but I would like to move this into evidence.

17 MS. HOWLETT: It came in this morning.

18 MS. WARSHAW: It came in? Okay.

19 BY MS. WARSHAW:

20 Q Okay. I'm showing you what's been marked
21 P-20, which I believe is also R-15, have you seen this
22 before?

23 A Yes.

24 Q And can you look at the fifth line from the
25 bottom which says, "J.H. greatly improved," can you

1 read that sentence, please?

2 A "J.H. greatly improved while in program" -- I'm
3 sorry. "J.H. greatly improved while in program due to
4 the fact that she was able to be in a smaller class
5 group setting, process her feelings and emotions, and
6 received more individualized attention for school
7 work." Continue?

8 Q No. Okay.

9 MS. WARSHAW: Your Honor, I believe this is
10 already in evidence but to make sure it's in evidence.

11 MS. HOWLETT: It is, Your Honor.

12 THE COURT: R-15?

13 MS. HOWLETT: R-15.

14 MS. WARSHAW: It's also R-15.

15 MS. HOWLETT: Yes.

16 THE COURT: Hm-hm.

17 BY MS. WARSHAW:

18 Q When you asked for the Child Study Team to
19 evaluate J.H., what evaluations to your knowledge did
20 they do?

21 A Two were done, there was a Psychological
22 Evaluation and a Social Evaluation.

23 Q Can you turn to P-21 which I believe is also
24 R-18, have you seen this report before?

25 A Yes, this is the report from the Social Worker.

1 Q Okay. Did you discuss this report at any of
2 the IEP meetings with the school?

3 A Yes, I believe the Social Worker went over it at
4 the IEP meeting.

5 Q Okay.

6 A Oh, no, no, that's not true, she wasn't there.
7 No, so we never -- no, we didn't.

8 Q Okay. Did you have any issues with this
9 report?

10 A No.

11 Q I'm going to show you what is P-22 which is
12 also R-16. Can you tell me what this report is?

13 A This is the Psychological Evaluation that was done
14 by the School -- the stand-in School Psychologist,
15 Sherry Wilk.

16 Q Okay. Did you discuss this report at any of
17 the IEP meetings?

18 A This we discussed at the IEP meeting, yes, on
19 April 6th.

20 Q April 6th, and can you tell me if at that time
21 you raised any issues with regard to the accuracies or
22 the characterizations in this report?

23 A Yes, we had several issues with the information in
24 this report.

25 Q Can you tell me what those issues were?

1 A Yes, some of them were -- first of all, you know,
2 we've talked about this before it says, "Clifton Public
3 Schools," and that's -- that's incorrect.

4 In the paragraph under, "Background Information,"
5 it says, "J. was hospitalized on 9/22/16," she was
6 never hospitalized, that was a clinic that she went to.
7 It says that -- later in that paragraph that, "She
8 refused to go back to school," and we had an issue with
9 that, we said that she couldn't go back to school
10 because of her anxiety.

11 What else -- and then going to the back of the
12 report there's a section here under, "Parent Rating
13 Scales," and some information based on the parents
14 rating of J.'s behavior and some of these things were
15 just not true.

16 On the back page of that it says that, "She lacks
17 creativity," which is not true. That, "She has trouble
18 getting others to work together effectively," not true.
19 That, "She has difficulty at seeking out and finding
20 information of (sic) her own," not true. And the thing
21 that really upset us is that it says that, "She
22 sometimes threatens to hurt others," now this is being
23 what the parents reports and we said that is absolutely
24 not true and they are not factual statements.

25 Q And what if anything was done as a result of

1 you and your wife indicating to Ms. Wilk that these
2 were inaccurate?

3 A We were kind of put off a bit and to my knowledge
4 none of our changes were ever made.

5 Q And there were two IEP meetings, one on April
6 6, 2017 and one on May 16, 2017, were any of your
7 changes to this report incorporated in the IEP
8 presented to you on the May 16, 2017 IEP meeting?

9 A No.

10 Q Did we discuss at the May 16, 2017 IEP
11 meeting that these changes had not been made to this
12 report?

13 A Yes. Yes, you brought that up towards the end of
14 the meeting that we had issues with this Psychological
15 Report and we wanted changes made and they had not been
16 made.

17 Q And since the May 16, 2017 IEP meeting to
18 your knowledge no other IEP has been presented to you
19 and no changes have been made to this Psychological
20 Report.

21 A That is correct.

22 Q I'm going to refer you to the front page of
23 this report under, "Background Information," the second
24 line from the bottom of the first paragraph it says,
25 "She refused to go back to school." Is that an

1 accurate statement?

2 A No, my wife and I felt that was not an accurate
3 statement. It kind of cast J. as having, you know,
4 behavioral -- or being a problem, but it was because of
5 anxiety and she was unable to go back to school.

6 Q And at any point at one of these IEP meetings
7 did you question the scores in the "Low Average" range
8 and what they meant?

9 A Could you repeat that, please?

10 Q At any of the IEP meetings, either in April
11 or May of 2017, did you ever question the findings that
12 said "Low Average"?

13 A Yeah, we were curious about that and what the
14 implications meant.

15 Q And were you ever told any answer to your
16 concerns?

17 A Well, we were told that she's in the "Low" range
18 but it was okay.

19 Q Okay. I'm going to have you turn to P-23
20 which is -- are you familiar with this report?

21 A Yes.

22 Q Okay. And are you aware that Dr. Srinivasan
23 has requested an out of District placement?

24 A Yes.

25 Q Was it your understanding that this was an

1 out of District placement or a therapeutic out of
2 District placement?

3 A Out of District placement.

4 Q I'm going to show you what's been marked
5 P-24, have you ever seen this document?

6 A Yes, yes.

7 Q What was your understanding -- strike that.
8 Did you attend an eligibility meeting?

9 A Yes, this is the invitation to that eligibility
10 meeting.

11 Q What was your understanding at the time that
12 you attended the eligibility meeting as to what the
13 District was going to do?

14 A We were going to go over the reports that -- the
15 evaluations that had been done, the Psychological and
16 the Social Evaluation, and we were going to discuss an
17 IEP for J., J.H.

18 MS. WARSHAW: Your Honor, I would like to move
19 P-24 into evidence.

20 THE COURT: I think it's already in under "R".

21 MS. WARSHAW: It may be.

22 THE COURT: Yeah, well --

23 MS. WARSHAW: The back and forth, we can do it
24 -- (out of microphone range)

25 THE COURT: Yeah, but it's a little

1 disconcerting to me that this was addressed to both of
2 you, why do I have to go back and forth between
3 documents when my pre-hearing order said to consult and
4 do a Joint exhibit list and almost all of it would have
5 been in one book on a Joint exhibit list as opposed to
6 me having to go back and forth between two binders that
7 have virtually the same information?

8 And before -- when we're done here, I'm
9 directing both of you to confer and present me with one
10 book that has everything in it as opposed to me going
11 back and forth, both of you. Go ahead.

12 BY MS. WARSHAW:

13 Q I'm going to refer you to what's been marked
14 P-25 which I believe part of it is R-7. On the first
15 page of this document is that your signature?

16 A Yes.

17 Q I'm going to refer you to the third page of
18 that document, it says -- partway down it says,
19 "Psychiatric Evaluation Summary," under the,
20 "Recommendations," what does that say?

21 A I'm sorry, where?

22 Q On the third page it says, "Eligibility
23 Determination Report," and then just the second read
24 heading it says, "Psychiatric Evaluation Summary."

25 A Hm-hm.

1 Q Okay. Right under that it says,
2 "Recommendations," what is that recommendation?

3 A "At this time an out of District placement is
4 advised, J." -- oh, J.H.

5 Q Okay. I'm going to refer you to the next
6 page of this document.

7 A Yes.

8 Q Is that your signature?

9 A Yes.

10 Q Okay. Can you tell me what the heading is
11 just above your signature?

12 A "Waiver of Notice (sic)."

13 Q And can you read what it says?

14 A "I hereby waive the 15 day notice requirement to
15 permit the IEP Team to proceed to present the IEP
16 program and placement."

17 Q So at the time that you signed this Notice of
18 Waiver (sic) what was your understanding as to what you
19 were signing?

20 A That we were going to be looking into the IEP, it
21 was going to be presented, and we were going to look at
22 the -- what was advised which was the BSP Program at
23 Mendham High School, gather some information and make
24 changes and modifications as appropriate as more
25 information came in and as we assessed the program.

1 Q At this time that you signed this did you
2 have any awareness or knowledge that you were
3 consenting to anything other than waiving the 15 day
4 notice?

5 A No, no.

6 Q And in that sentence it says that the IEP
7 Team will proceed to present the IEP, is that what
8 you're referring to where they would show you what the
9 IEP says and you would go from there?

10 A Correct.

11 Q On that same page there is another heading
12 above the Notice of Waiver, can you read that?

13 A "Statement of Eligibility."

14 Q Yes.

15 A "Review of the records and consideration of the
16 cognitive functioning, academic achievement, learning
17 styles, and adaptive behavior indicates that J. is
18 eligible for Special Education and Related Services as
19 (sic) meets the criteria of Emotionally Disturbed."

20 Q Does it say anywhere that J.H. would be
21 classified as, "Emotionally Disturbed?"

22 A No, it just says she, "Meets the criteria."

23 Q So when you signed this form were you in any
24 way under the impression that you were consenting to
25 the classification of Emotionally Disturbed?

1 A No, my wife and I made it very clear at the
2 meeting that we did not feel that was the correct
3 classification and we wanted that changed and we were
4 led to believe that as part of this process of the IEP
5 that it could be changed and it would be changed at a
6 later date.

7 Q And when you're referring to a, "Meeting,"
8 that was -- what was the date of that meeting?

9 A April 6th.

10 Q So is it fair to say that the language of --
11 it was your understanding that the language of the
12 Notice of Waiver indicated that you were signing so
13 that the IEP Team could proceed to present the IEP
14 sooner to you?

15 MS. HOWLETT: Your Honor, this is leading.

16 THE COURT: It is but I'm going to allow it.
17 Go ahead.

18 THE WITNESS: Yes, you know, time was of the
19 essence, we wanted to have an opportunity to look at
20 the BSP Program. The way we left this April 6th meeting
21 was that we would look at the BSP Program and see if it
22 was a fit for J., J.H.

23 THE COURT: I have a question. The BSP
24 Program was mentioned at the eligibility meeting.

25 THE WITNESS: Yes.

1 THE COURT: Hm-hm. And it was discussed.

2 THE WITNESS: Yes.

3 THE COURT: All right. When you signed this
4 you read the part that said that it was a
5 recommendation for an out of District placement.

6 THE WITNESS: Yes.

7 THE COURT: You read that.

8 THE WITNESS: Yes.

9 THE COURT: Did you discuss that as well?

10 THE WITNESS: Yes, we did discuss that because
11 we had looked at, you know, a couple of schools --

12 THE COURT: No, see I'm talking -- that's why
13 I asked the question about you said you talked about
14 the BSP at -- the program.

15 THE WITNESS: Correct, yeah.

16 THE COURT: So I'm a little confused as to
17 where this meeting went and maybe you could help me
18 out.

19 THE WITNESS: Sure. So the IEP recommendation
20 -- we were presented the IEP rec --

21 THE COURT: Right.

22 THE WITNESS: -- at the meeting and that said
23 -- that recommended to the BSP Program.

24 THE COURT: That's not what I just read.

25 MS. WARSHAW: Your Honor, just to clarify,

1 this Eligibility Report was also -- this happened
2 before and then right after that they had the IEP
3 meeting.

4 THE COURT: This was all in one day.

5 MS. WARSHAW: Yes.

6 THE COURT: Okay.

7 MS. WARSHAW: Yes. Does that clarify it?

8 THE COURT: Now I'm clarified. Counsel
9 clarified it for me.

10 MS. WARSHAW: Sorry.

11 THE COURT: Okay.

12 THE WITNESS: It's all one blur to me.

13 MS. WARSHAW: You took my question.

14 THE COURT: I'm sorry.

15 MS. WARSHAW: That's okay.

16 THE COURT: You know, if I don't ask it right
17 away I forget.

18 MS. WARSHAW: No problem.

19 THE COURT: All right. Thank you. Go ahead.

20 BY MS. WARSHAW:

21 Q At the time that you signed the Notice of
22 Waiver if you had known it was meant -- if you had
23 known that you were agreeing to classify your daughter
24 as Emotionally Disturbed would you have signed it?

25 A No, no, we said we disagreed with that.

1 Q Did anyone at any time indicate what it meant
2 for J.H. to meet the criteria of being Emotionally
3 Disturbed?

4 A Meet the criteria, no, I don't believe so. No, we
5 were told that that was the only term that could be
6 used for her, that was the only explanation we got.

7 Q And at the April 6, 2017 IEP meeting when you
8 discussed the classification was that -- who told you
9 about that that was the only classification that could
10 be given to you?

11 A That was Sherry Wilk, the Psychologist.

12 Q And can you describe for the Court any more
13 about your discussions with Sherry Wilk about what --
14 or anything that happened at the April 6, 2017 IEP
15 meeting?

16 A Yes, so the IEP was presented -- well, we all went
17 there, my wife, my daughter and I all went there, and
18 Sherry Wilk asked my daughter to sit outside while we
19 discussed the various reports.

20 So we went through the Psychological Evaluation
21 and the IEP and that took about an hour and then -- so
22 J. was outside by herself all that time and then we
23 brought her in and sort of rehashed the same thing with
24 her and then at the end it was said that the school was
25 recommending the BSP Program, the Behavior Support

1 Program, and Mr. Cusack started to explain a little bit
2 about it and then J. asked what her other options might
3 be.

4 And the Psychologist said, "Well, at this time
5 there aren't any other options, this is what we're
6 going with," and J. started to get upset and the
7 Psychologist started telling her, you know, repeatedly
8 over that, you know, "This is not the way adults
9 behave, you have to have an open mind, you know, stop
10 being upset," you know, those kinds of things which my
11 wife and I did not appreciate at all.

12 And so finally J. got upset enough that it was
13 suggested that she take a break and leave the room with
14 my wife which she did and then when they left the
15 Psychologist told those of us that were left in the
16 room that she couldn't tell if J. was faking it or not
17 and it was basically at that point that I said to
18 myself I need to get a lawyer.

19 Q Okay. I'm going to refer you --

20 MS. WARSHAW: Your Honor, I would like to move
21 P-25 into evidence, It is a little bit different than
22 R-9. It's missing one of the pages so I would like to
23 -- mine is complete.

24 THE COURT: Well, here's what we're going to
25 do, you two are going to confer and present me what you

1 want as Joint exhibits.

2 MS. WARSHAW: Okay.

3 THE COURT: And then we'll exclude the
4 redundancy in the two books. All right. Anything
5 that's not redundant that you want to move in we'll
6 entertain when the case is over. I'm not going to do
7 this piecemeal because I'm getting confused and you do
8 not want me confused when I'm writing the decision.

9 MS. HOWLETT: Okay.

10 MS. WARSHAW: So can we enter P-25 into
11 evidence?

12 THE COURT: We're not entering anything --

13 MS. WARSHAW: No.

14 THE COURT: -- until you do what I just told
15 you to do.

16 MS. WARSHAW: Okay.

17 THE COURT: So some time after today you two
18 can confer and come up with a Joint exhibit book and
19 present that and then anything that's not redundant
20 that's in your respective books we can move. But I'm
21 not doing any more -- there's no more -- nothing else
22 is going into evidence today until you do what you were
23 supposed to do initially and confer.

24 BY MS. WARSHAW:

25 Q I'm going to show you --

1 THE COURT: And then when -- I'm sorry, when
2 we reconvene on whatever date that is in the future, I
3 know we have more days, but whenever our next date is
4 the first thing we're going to do is the evidence, all
5 right, so we can just get that all straightened out.

6 Thank you. Go ahead.

7 BY MS. WARSHAW:

8 Q I'm going to show you what's been marked
9 P-26.

10 A 26.

11 Q When you arrived at the April 6, 2017 IEP
12 meeting were you handed an IEP?

13 A Yes.

14 Q Okay. I'm going to refer you to the third
15 page of P-25 -- I'm sorry --

16 THE COURT: 6.

17 MS. WARSHAW: P-26.

18 BY MS. WARSHAW:

19 Q Okay.

20 A What page?

21 Q From this point back is this the IEP that you
22 were handed?

23 A Yes.

24 Q And who is listed as the Case Manager?

25 A The Case Manager on this, "Sherry Wilk."

1 Q Did you have any input in putting this IEP
2 together?

3 A No.

4 Q And after your discussions with the Child
5 Study Team at the April 6, 2017 IEP meeting did you
6 have any other input into the IEP that was presented to
7 you at the May 16, 2017 IEP meeting?

8 A No, other than the points we brought up at the
9 April 6th meeting.

10 Q Were any of your points incorporated into the
11 IEP that was provided to you in May at that IEP
12 meeting?

13 A No.

14 Q When -- I'm going to refer you tot he first
15 two pages of P-26, actually the first page, when was
16 the first time that you saw the word "Draft" written on
17 the IEP?

18 A When I was presented with this book.

19 Q Okay. When you were at the IEP meeting in
20 May of 2017 did the IEP that you were presented have
21 the word "Draft" on it?

22 A Not that I'm aware of, no.

23 THE COURT: The draft -- the one that says,
24 "Draft," would have been presented at the April
25 meeting. Correct?

1 MS. WARSHAW: No. It was at the -- that's the
2 one that says Kendra Wilk (sic) --

3 THE WITNESS: Oh, yes.

4 MS. WARSHAW: -- Dickerson, she was on
5 maternity leave at the April 6th meeting, she was at the
6 May meeting.

7 THE COURT: Okay.

8 MS. HOWLETT: The only difference is the cover
9 page, that's -- (out of microphone range)

10 THE COURT: I understand that. Okay. Go
11 ahead.

12 BY MS. WARSHAW:

13 Q Did the school offer J.H. an out of District
14 placement at any time?

15 A No.

16 Q Did the school offer J.H. a therapeutic out
17 of District placement at any time?

18 A No.

19 Q Did you agree to have your daughter attend
20 the Behavioral Support Program at Mendham High School?

21 A No.

22 Q When was the first time that you've ever
23 heard about the Behavioral Support Program?

24 A I believe our -- J.H.'s Guidance Counselor
25 mentioned it to us as one of the options that would be

1 considered.

2 THE COURT: Could you give me a time frame on
3 that?

4 THE WITNESS: That would have probably been
5 when she returned to school in December and was unable
6 to attend and we started looking at other options.

7 THE COURT: Thank you.

8 BY MS. WARSHAW:

9 Q Did you hear about the Behavioral Support
10 Program in December or was it at the IEP meeting in
11 April of 2017?

12 A Well --

13 MS. HOWLETT: He just testified --

14 THE COURT: He just testified --

15 MS. WARSHAW: I'm just trying to clarify --

16 THE COURT: I just asked him the question and
17 he said, "December."

18 MS. WARSHAW: Okay.

19 THE COURT: When J. went back to school from
20 Mr. Cusack, correct, he was the Guidance Counselor?

21 THE WITNESS: Correct.

22 THE COURT: Okay.

23 THE WITNESS: It was officially presented at
24 the IEP.

25 MS. WARSHAW: Okay. That's right.

1 THE WITNESS: Yeah.

2 BY MS. WARSHAW:

3 Q When was the first time that you ever heard
4 the term, "Being Successful Program?"

5 A Not until we received, again, this book with --
6 with the brochure in it. We never heard those words
7 spoken, we never saw them in print, and anybody who
8 ever referred to it to us called it the, "Behavioral
9 Support Program."

10 Q And so the IEP that was presented to you both
11 at the April 6, 2017 IEP meeting and the May 16, 2017
12 IEP meeting referred to the program as the Behavioral
13 Support Program at Mendham High School. Was that your
14 understanding?

15 A The documents did, yes.

16 Q And at some point your wife and your daughter
17 went to see the Behavioral Support Program, do you
18 recall when that was?

19 A That would have been after the April meeting, some
20 time in April I believe.

21 Q When was the first time that you heard about
22 the Purnell School as a possible school for J.H.?

23 A We actually had a list of 20 schools in the area,
24 the Purnell School was on that list, but J. had
25 rejected it initially because she didn't want to go to

1 an all girls school so it was not one of the ones that
2 we considered or looked at.

3 Q Was the Purnell School ever mentioned at one
4 of the IEP meetings?

5 A No -- well, at the -- I'm sorry, at the May 16th
6 meeting it was mentioned.

7 Q Can you tell the Court what was said about
8 it?

9 A Okay. So we were having the IEP meeting and you
10 brought up some of the schools we had looked at, Flex,
11 Fusion, and you mentioned another -- you know, Purnell
12 as a possible school.

13 And then after the meeting was over David Leigh
14 came up to us and said, "Did you -- did you look at the
15 Purnell School?" And we said, "No, we hadn't looked at
16 it," and he said, "Why don't you take a look at it, it
17 would probably be worth looking at?" And then you
18 asked him, "Is that something the District would
19 consider for J.?" And he said, "Possibly, it's got the
20 peer group that you're looking -- that she needs," and
21 that kind of thing. So it was at that point -- only at
22 that point that we actually went to look at it.

23 Q And had you previously requested an out of
24 District placement to a different school to the Child
25 Study Team?

1 A J. initially -- J.H. initially was -- thought that
2 Fusion might be a good fit for her and we had visited
3 there and they had said that other school districts
4 send children there so we thought that would be
5 something that we could explore.

6 Q And at the May 16, 2017 IEP meeting is it
7 fair to say that you expressed concerns about the
8 Behavioral Support Program at the Mendham High School
9 for J.H.?

10 A Yes, yes.

11 Q And what did -- do you recall what you
12 expressed were some of your concerns?

13 A Well, again it was walking into a big school, you
14 know, the very fact that she had to walk into the door
15 and that she had to walk through a crowded hallway to
16 get to the BSP Program room and then once there, you
17 know, you couldn't -- you really couldn't leave because
18 she would be in this -- you know, in this environment
19 that was -- you know, that caused the anxiety.

20 So it would be, you know, sort of in this
21 self-contained room that she would be -- that she would
22 be in the whole time. Other issues were that, you
23 know, they couldn't offer, you know, Gym or something
24 like that where she could get out because, you know,
25 she couldn't go into the mainstream classes,

1 And we didn't -- and of course she couldn't go to
2 the mainstream classes for any advanced work that she
3 needed to do. I think we brought up issues with, you
4 know, Lab classes like Chemistry and Physics where you
5 would need to be in a Lab, how would that be done and
6 it didn't seem like that had a solution for that.

7 Music, you know, they really didn't have a
8 solution for that. I think David Leigh mentioned they
9 could bring in a piano but she played the clarinet so,
10 you know, and she -- you know, that you typically play
11 in an band or something and how would that be done.

12 So we had a lot of issues with it and also with
13 the peer group that would be there, it seemed like it
14 was a mixed bag of students from being rebellious
15 students to students having, you know, other issues and
16 that, you know, all of them might not be college bound
17 and we wanted J. in a peer group that, you know, that
18 was academically challenged and where her peers were
19 looking to go to college.

20 Q Do you recall at the May 16, 2017 IEP meeting
21 if there was any discussion about her taking Gym online
22 such as volleyball?

23 A Yes, I believe that that was the explanation as to
24 how Gym would be done, she would go online at the -- in
25 the BSP room and do a program there for Gym.

1 Q So was it your understanding that the BSP,
2 the Behavioral Support Program, did or did not have
3 higher level academic classes?

4 A It was our understanding that -- well, we were
5 kind of confused, from the visit to the BSP, you know,
6 we were told that to take higher level academic classes
7 you would have to take them in the mainstream and then
8 Dr. Leigh told us in the -- in the May 16th meeting that
9 they would bring in a private tutor for the advanced
10 classes.

11 Q Were you aware of any differences between the
12 Behavioral Support Program at the Mendham High School
13 and the Behavioral Support Program at West -- Central
14 High School?

15 A Yes, we were sort of told by Joe Cusack that the
16 one in Mendham might be better for J.H. because the one
17 in West Morris that the kids there might have had more
18 behavioral issues, rebellious issues and, you know,
19 lack of attending school issues and that kind of thing,
20 that was it.

21 Q Were you ever informed that the Behavioral
22 Support Program in Mendham High School was for
23 psychiatric reasons or was it described to you has a
24 behavior class?

25 A Yes, we were never told that it was for

1 therapeutic or anything like that. It was -- it was,
2 you know, an academic level class and, you know, it was
3 just to get the kids to get in the door and attend high
4 school more or less.

5 Q To your knowledge were any of the concerns
6 that you raised at the May 16, 2017 IEP meeting
7 incorporated into another IEP?

8 A No.

9 Q After the May 16, 2017 IEP meeting did you
10 have any discussions with the District about changes to
11 the IEP or the placement?

12 A After the May meeting with the District, no, no.

13 Q Was there any explanation provided to you by
14 Kendra Dickerson as to why there were no further
15 discussions between you and the Child Study Team?

16 A When are you asking this because she testified
17 that after that meeting there was --

18 MS. HOWLETT: Your Honor -- (out of microphone
19 range)

20 THE WITNESS: Oh, I'm sorry.

21 THE COURT: Yeah.

22 BY MS. WARSHAW:

23 Q Were you aware --

24 A I don't know what the question --

25 Q Okay. Let's rephrase it. Were you ever

1 provided with an explanation as to why there were no
2 further discussions between you and the Child Study
3 Team after the May 16, 2017 IEP meeting?

4 A No.

5 Q Were you aware of any contacts between
6 Counsel regarding issues with the IEP and placement and
7 classification?

8 A Yes, that the -- that the Counselors were talking
9 about it. Is that what you mean? Yes.

10 Q Were you aware of that?

11 A Yes, yes.

12 Q I'm going to show you what's been marked
13 P-27, have you seen this email before?

14 A Yes, we received a copy of it, we were CC'd on it.

15 Q What's the date of this email?

16 A "May 22, 2017."

17 Q And who is this email between?

18 A This is an email between you and Jodi -- and Jodi
19 Howlett.

20 Q Okay. Is there any mention in this email
21 about any changes that needed to be made?

22 A Yes, this is about you requesting changes to be
23 made.

24 Q Okay. And what were the changes to be made
25 for?

1 A "Several changes that need to be made including"
2 -- (reading out of microphone range)

3 MS. HOWLETT: Your Honor, the witness didn't
4 draft this email.

5 THE COURT: Yeah, that's what I'm thinking.

6 MS. HOWLETT: He said he's never seen it
7 before and now we're --

8 MS. WARSHAW: He did -- (out of microphone
9 range)

10 THE COURT: No, he said he saw it.

11 MS. HOWLETT: I'm sorry, he did see it?

12 THE COURT: He did say he saw it.

13 BY MS. WARSHAW:

14 Q Were you aware that there were requests made
15 by Counsel to the Attorney for the District that -- to
16 correct the errors in the Psychological Report as well
17 as changes to the IEP?

18 A Yes.

19 Q Were you aware that Counsel was discussing in
20 this email the classification issue?

21 A Yes.

22 Q And is there a mention that you were
23 disagreeing with the Behavioral Support Program?

24 A Yes.

25 Q And is there a mention that you were going to

1 locate other -- other appropriate out of District
2 schools?

3 A Yes, that is mentioned here.

4 Q And is there a request to toll the time, a
5 15 day time frame, to have the IEP come into effect?

6 A Yes.

7 Q Okay. I'm going to refer you to the second
8 page of P-27. Were you also aware that there was
9 another email between Counsel?

10 A Yes.

11 Q And you were copied on this.

12 A I was, yeah.

13 Q What is the date of this email?

14 A This is, "May 26, 2017."

15 Q Okay. Can you read this email?

16 THE COURT: It speaks for itself, I don't --

17 MS. WARSHAW: It speaks for itself?

18 THE COURT: Yes, if it's going to come into
19 evidence I don't need -- I don't need Mr. H. to read it
20 to me.

21 MS. WARSHAW: Okay.

22 BY MS. WARSHAW:

23 Q Turning to the next page, were you aware that
24 there was another email from Counsel to the District in
25 August of 2017?

1 A Yes, "August 18, 2017."

2 Q And attached to this email was there another
3 letter from the ICCPC?

4 A Yes.

5 Q And what is the date of that letter?

6 A This is, "8/17/2017."

7 Q Turning two more pages, were you aware of
8 another email that was sent to Counsel in August of
9 2017?

10 A Yes, this is dated, "August 24, 2017."

11 Q Turning a few more pages there is a letter,
12 were you aware that there was a letter sent, "August
13 26, 2017?"

14 A August 26th, yes.

15 MS. WARSHAW: Your Honor, I'm going to allow
16 these to speak for themselves as to the correspondence.

17 THE COURT: If they're going to come in, yes,
18 I don't need them read to me.

19 BY MS. WARSHAW:

20 Q Turning two more pages, were you also aware
21 of another email dated, "August 29, 2017," to Counsel?

22 A Yes.

23 Q Turning another page, were you aware that
24 there was another letter to Counsel dated, "September
25 16, 2017?"

1 A Yes.

2 Q And were you aware that during the time of
3 August through mid September there was no communication
4 or response to any of these correspondence from Counsel
5 for the District?

6 A That is my understanding.

7 Q And in August and September of 2017 were you
8 still attempting to find an appropriate placement for
9 your daughter for that school year?

10 A Yes.

11 MS. WARSHAW: Your Honor, I would like to move
12 P-27 into evidence when -- well, I'm just preserving my
13 right.

14 BY MS. WARSHAW:

15 Q I'm going to refer you to P-28. Can you tell
16 the Court what this is?

17 A This is a letter from J.H.'s Therapist at ICCPC,
18 Melissa Dolgos, and it is a letter that was written in
19 August of 2017 explaining that she is working with J.
20 and recommending a placement that would be appropriate
21 for J. based on her current state of progress.

22 Q I'm going to have you read from the third
23 line down, can you read the few sentences please where
24 it says, "She has struggled?"

25 A "She has struggled in large -- with engaging in

1 large group settings due to feeling overwhelmed and
2 having thoughts that others were going to judge her for
3 what she says.

4 "I was able to encourage J. to try and attend
5 school again for approximately two days last year and
6 she continued to report anxiety due to the large
7 population of students and the size of her classes.
8 She was unable to complete her academic assignments due
9 to the anxiety causing her confusion and delaying her
10 ability to function in school.

11 "While in smaller group settings I have noticed
12 that J. was able to progress in managing her anxiety.
13 She became more open and engaged and identified that
14 her anxiety lessened throughout time. I have worked
15 with J. for almost one full year and throughout that
16 time have seen her progress when she is in smaller
17 settings where she can get more attention and feel less
18 anxious.

19 "J. is a very mature and bright person, she excels
20 better when people around her are mature and college
21 bound rather than peers who have behavioral issues.
22 Throughout my time with her J. has never demonstrated
23 any negative behaviors or came to the program due to
24 behavioral issues. She also does not respond well with
25 others around her have behavioral issues as it

1 distracts her and causes her to become anxious again.

2 "She will be continuing treatment here at ICCPC
3 throughout the school year and will not need to be --
4 and will not be in need of therapy while in school.
5 She will need a structured but non-strict educational
6 environment as she functions better with more flexible
7 schedules. It is highly recommended that she be placed
8 in a school that can meet these needs in order for J.
9 to function academically and succeed."

10 Q And the date of this letter is that -- was
11 this sent to -- I'm sorry, strike that. Was this
12 letter sent to the School District in August of 2017?

13 A Yes, I believe it was.

14 MS. WARSHAW: I would like to move this into
15 evidence as well.

16 THE COURT: Again, I'm not accepting anything
17 until you guys work it out.

18 MS. WARSHAW: I know, I'm just preserving it.

19 THE COURT: Whatever you don't work out we'll
20 discuss before we start taking testimony at the next
21 session.

22 BY MS. WARSHAW:

23 Q I'm going to show you what's been marked
24 P-29, have you seen these emails before, the first two
25 pages?

1 A Yes, yes.

2 Q And the date of this email on the first page?

3 A The first page is, "Friday, August 25, 2017."

4 Q And can you give a quick synopsis as to what
5 this email says?

6 A This has to do with J.'s testing results with Dr.
7 Shuberth. We're asking -- my wife is asking that
8 Kendra Dickerson give her a call so that we can discuss
9 the results because school is almost here and we need
10 to decide what we're going to do about J.'s school for
11 the year.

12 Q Okay. I'm going to refer you to the next
13 page, have you seen this email before?

14 A Yes.

15 Q And, again, can you give us a quick synopsis
16 as to what this says?

17 A Yeah, this is from, "Friday, September 8th," it's
18 to Joe Cusack, our Guidance Counselor, and she's
19 talking about a phone conversation that was had on,
20 "August 25th," wherein we were informed that J. would be
21 coming back to West Morris as a general education
22 student with a 504 and this would be the old 504 that
23 she had way back in December.

24 And it says that we were confused because she was
25 already determined to be eligible for Special Services

1 with a previously proposed IEP and we're trying to get
2 information and if we can get a plan proposed in
3 writing for J.

4 Q Were you aware that the School District paid
5 for any independent evaluations?

6 A Yes, the school paid for two independent
7 evaluations.

8 Q And what were they?

9 A One was a Psychological Evaluation and one was an
10 Academic Evaluation.

11 Q Okay. Do you recall who did those
12 evaluations?

13 A Yes, it was Dr. Shuberth and Dr. Platt.

14 Q I'm going to refer you to P-32 and we're
15 going to start with the second page. Do you recognize
16 this report?

17 A Yes, this is Dr. Shuberth's Psychological Report.

18 Q And are you aware of the date of this report?

19 A The date is --

20 Q On page 15.

21 A Page 15?

22 Q Yeah, of the report.

23 A "8/21/17."

24 Q So in your own words do you recall what Dr.
25 Shuberth found with regard to your daughter?

1 THE COURT: Are you going to call Dr.
2 Shuberth?

3 MS. WARSHAW: She's on the list, yeah.

4 THE COURT: I didn't ask you if she's on the
5 list. Are you going to call her?

6 MS. WARSHAW: Yes. Yeah, we have --

7 THE COURT: Then let her explain her report.

8 MS. WARSHAW: Well, I would like to know his,
9 you know, his understanding of it.

10 THE COURT: Well, you have him looking --
11 leafing through the report to read me what the Doctor
12 says.

13 MS. WARSHAW: Okay.

14 THE COURT: If he under -- if he understands
15 what it says he doesn't need to read through the report
16 he can just tell me what he understood the report to
17 say.

18 MS. WARSHAW: Okay.

19 BY MS. WARSHAW:

20 Q Were you aware that --

21 THE COURT: And ask a direct question.

22 MS. WARSHAW: I'm sorry?

23 THE COURT: Ask a direct question.

24 MS. WARSHAW: Okay.

25 BY MS. WARSHAW:

1 Q To your knowledge did Dr. Shuberth diagnose
2 you daughter with a --

3 THE COURT: A direct question would be, do you
4 under -- do you know what the diagnosis was of your
5 daughter?

6 THE WITNESS: The exact diagnosis I cannot
7 recall honestly.

8 THE COURT: Okay.

9 BY MS. WARSHAW:

10 Q At any time were you made aware that your
11 daughter was diagnosed with a Specific Learning
12 Disability?

13 A Yes, yes.

14 Q Do you recall who diagnosed that?

15 A I don't remember which -- which report came up
16 with that. I know that that was, you know, the outcome
17 of one of these two reports that she had a learning
18 disability but I don't remember which Doctor came up
19 with that.

20 Q That's fine. Was this report provided to the
21 District?

22 A Yes, the District ordered the report so they got
23 it before we did.

24 MS. WARSHAW: Again, I'm going to preserve my
25 right to --

1 THE COURT: Hm-hm.

2 MS. WARSHAW: -- to put this into evidence.

3 BY MS. WARSHAW:

4 Q To your knowledge did the School District
5 contact you in any way after receiving Melissa Dolgos'
6 Report of August 17, 2017 to change or modify the IEP?

7 A No.

8 Q To your knowledge did the School District
9 contact you in any way to change or modify the IEP once
10 they received Dr. Shuberth's Report?

11 A No.

12 Q I'm going to refer you to P-33. Do you
13 recognize this report?

14 A Yes, this is Dr. Platt's Report.

15 Q And to your knowledge the School -- did the
16 School District have a copy of this report as well?

17 A Yes.

18 Q And to your knowledge did Dr. Platt mention
19 that J.H. had a Specific Learning Disability?

20 A Yes.

21 Q To your knowledge after receiving this report
22 from Dr. Platt did the School District at any time
23 contact you or offer to change or amend the IEP for
24 J.H.?

25 A No.

1 Q Prior to the first day of public school did
2 you have an IEP in place for J.H.?

3 A No.

4 Q Prior to the first day of school or on the
5 first day of school as well at the public school did
6 you have an updated 504 Plan for J.H.?

7 A Updated, no.

8 Q And is it fair to say that Melissa Dolgos'
9 August 17, 2017 Report and Dr. Shuberth's August 21,
10 2017 Report were received by the District prior to the
11 start of the public school -- school year?

12 A Yes.

13 Q Once the School District received Dr.
14 Shuberth's and Dr. Platt's independent reports did the
15 School District ever call another IEP meeting prior to
16 or after the start of school for J.H.?

17 A No. We never heard from the school pretty much
18 all summer and into the -- into September.

19 MS. WARSHAW: Again, I'm going to request to
20 move this into evidence.

21 THE COURT: Okay.

22 BY MS. WARSHAW:

23 Q I'm going to have you go back to P-29 to the
24 third page. Is this the outdated 504 Plan that the
25 District --

1 MS. HOWLETT: Your Honor -- (out of microphone
2 range)

3 THE COURT: Hm-hm.

4 MS. WARSHAW: Okay.

5 BY MS. WARSHAW:

6 Q What's the date of this -- of this 504 Plan?

7 A It's 29?

8 THE COURT: Are you on P-29 because P-29 is
9 not the 504 Plan?

10 THE WITNESS: Yeah, I think it's --

11 MS. WARSHAW: P-29, it's the third page, it's
12 not the -- it's the 504 Plan.

13 THE COURT: Oh, it's the attachment to the
14 email.

15 MS. WARSHAW: Yes, the attachment to the
16 email.

17 THE WITNESS: Oh, oh?

18 MS. WARSHAW: It should be the third page.

19 THE COURT: Well, he stated -- he already said
20 it was never revised.

21 MS. WARSHAW: Okay.

22 THE WITNESS: Oh, okay, this one. Yes, this
23 is the one she got initially in December.

24 BY MS. WARSHAW:

25 Q Was there any meeting that you attended or

1 received notice of prior to this 504 Plan being
2 implemented for the 2017/18 school year?

3 A No.

4 Q At the May 16, 2017 IEP meeting did you or
5 wife specifically inform the Child Study Team and Dr.
6 David Leigh that you were going to unilaterally place
7 your daughter in an out of District placement if you
8 could not work out an IEP?

9 A Yes.

10 Q When was the first time that you went to
11 visit the Purnell School? Do you recall?

12 A It was after the May 16th meeting, I don't recall
13 how long after that. My wife and daughter went shortly
14 after that and then I went on another occasion with
15 them.

16 Q I'm going to show you what's been marked
17 P-35, have you ever seen this letter?

18 A 35, yes.

19 Q And can you describe for the Court briefly
20 what this letter is?

21 A This is a letter from my wife and I to the
22 Principal at West Morris Central basically informing
23 him that J. would not be returning to the high school
24 and that she was enrolled at the Purnell School.

25 Q Okay. Do you believe that you and your wife

1 did everything to -- you could to reach an amicable
2 resolution with the District prior to placing your
3 daughter at the Purnell School?

4 A Yes.

5 Q And is your daughter attending the Purnell
6 School?

7 A She is.

8 Q Have you noticed any change in her since she
9 started attending the Purnell School?

10 A Yes, night and day, she's made tremendous progress
11 since she was there.

12 Q And can you describe for the Court a little
13 bit about that progress?

14 A Sure. She has -- she's able to make friends now,
15 she has many -- a couple of close friends, her anxiety
16 levels are low. She was able to participate and had a
17 lead in the school musical The Adams Family, she played
18 Gomez.

19 So she is really coming out and academically she
20 is, you know, getting "A's" and "B's" and doing really
21 well and just a wonderful experience and that school
22 helps so many girls that I really think the District
23 should consider placing people there.

24 Q Were you at any time aware that your daughter
25 was diagnosed with an issue with acute sounds bothering

1 her?

2 A Yes, she would complain about the noisiness of the
3 halls and she would complain about if we had the TV on
4 -- even though we're old, we're not that old where we
5 have it blasting but she would complained about that,
6 so she had a sensitivity to noise.

7 Q Now did there come a time that J.H. saw an
8 Audiologist?

9 A Yes.

10 Q Okay. I'm going to refer you to P-34, have
11 you ever seen this document before?

12 A 34, yes.

13 Q And can you just briefly describe what this
14 is?

15 A The is the result of J. visiting an Audiologist to
16 -- Dr. Hanna, to see what her hearing situation was and
17 basically he came up that she did have a sensitivity to
18 sound -- to noise.

19 Q And did you see Dr. Hanna as a result of
20 someone else referring -- indicating that she had a
21 problem with noise?

22 A Yes, one of the -- Dr. Shuberth or Dr. Platt, I
23 can't remember which one had said that there might be
24 an auditory issue that was increasing her anxiety and
25 inability to be in a large school setting.

F.H. - Direct

111

1 THE COURT: This report is dated, "February
2 28, 2018?"

3 MS. WARSHAW: Okay. "March" --

4 THE COURT: Since the cover letter has no date
5 on it.

6 MS. WARSHAW: The first -- it's, "March 26,
7 2018."

8 THE COURT: March 26th. I get it. Okay.

9 MS. WARSHAW: At the top of the page.

10 THE COURT: The top of the page?

11 MS. WARSHAW: Yes, the top. P-35 -- or P-34
12 we're on, it says, "Hunterdon Audio" -- (out of
13 microphone range)

14 THE COURT: Yeah, but I don't see a date at
15 the top of the page.

16 UNIDENTIFIED FEMALE: They put it in the wrong
17 spot, it's on the top right.

18 THE COURT: But the date on the top of the
19 page is the --

20 THE WITNESS: The "Date of Birth"

21 THE COURT: It's the "Date of Birth" of the --
22 (out of microphone range)

23 UNIDENTIFIED FEMALE: It's to the left -- (out
24 of microphone range)

25 MS. WARSHAW: Oh, okay.

1 THE WITNESS: Oh, I'm sorry, to the left above
2 the name, J.H.

3 MS. WARSHAW: It's to the left.

4 THE WITNESS: It says, "3/26/18," where it has
5 our address.

6 THE COURT: Oh, I see it. Okay. Thank you.
7 I need stronger glasses.

8 THE WITNESS: Me too.

9 THE COURT: But the date I read was from page
10 2.

11 MS. WARSHAW: Correct. That was --

12 THE COURT: Okay. That was the "Date of
13 Exam".

14 MS. WARSHAW: -- "February 28, 2018."

15 THE COURT: Okay. Very good. Thank you.

16 BY MS. WARSHAW:

17 Q I'm going to refer you to P-30, have you ever
18 seen this document before?

19 A Yes, yes.

20 Q Okay. And can you briefly describe for the
21 Court what this says and who it's from?

22 A This is from the ICCPC, it's from her Psychiatric
23 Nurse Practitioner who monitors J.'s or J.H.'s medicine
24 and it states that, "The medication that she's on has
25 had a positive outcome and that she's doing very well

1 in school."

2 MS. WARSHAW: I would like to move this into
3 evidence as well.

4 BY MS. WARSHAW:

5 Q I'm going to show you what's been marked
6 P-38 and going to the last page, have you ever seen
7 this before, "Authorization to Release Records?"

8 A Oh, yes.

9 Q And what was the date of this that it was
10 signed?

11 A "November 3, 2017."

12 Q And to your knowledge did the School District
13 ever produce these documents that was requested?

14 A No.

15 Q You indicated that your daughter goes to the
16 Purnell School now and are you paying the tuition bills
17 for that?

18 A Yes.

19 Q I'm going to refer you to P-37, have you ever
20 seen this -- these documents before?

21 A 37? Oh, yes, these are the tuition bills.

22 Q Can you review these pages and let the Court
23 know if these are true and accurate copies of the
24 statements from the Purnell School?

25 A Yes. Yes, they are, as well as copies of our

1 checks for some of the expenses.

2 MS. WARSHAW: I would like to move as
3 evidence.

4 BY MS. WARSHAW:

5 Q Can you tell the Court whether or not the
6 Purnell School has any supports for J.H.?

7 A Yes, she has a Counselor available, I believe the
8 Counselor only has three students -- or six students
9 that she is counseling so they break it up that way.
10 In addition I believe there's a Psychiatrist that comes
11 to the school three times a week.

12 Q And were you aware with the Behavioral
13 Support Program how many students would be -- strike
14 that. Were you aware at the Behavioral Support Program
15 that the Guidance Counselor had a number of students
16 that they were responsible for counseling?

17 A The Guidance Counselor?

18 Q Yes.

19 A I'm trying to understand the question.

20 THE COURT: How many students does the
21 Guidance Counselor in the BSE (sic) Program have if you
22 know?

23 THE WITNESS: I don't know that.

24 THE COURT: I didn't think you did.

25 THE WITNESS: I don't know that.

1 BY MS. WARSHAW:

2 Q Do you know if the Guidance Counselor is
3 responsible for counseling at the Behavioral Support
4 Program also counseled the students throughout the
5 Mendham High School?

6 A Are we -- I never met the Guidance Counselor at
7 the BSP.

8 Q Okay. I'm going to refer you to P-40, have
9 you ever seen this before?

10 A Yes.

11 Q Do you know who Megan DuVall is?

12 A Megan DuVall is J.H.'s Counselor at Purnell.

13 Q And what is the date of this letter on the
14 first page?

15 A "10/12/17."

16 Q I'm going to request that you read the second
17 paragraph, please.

18 A "I have been meeting with J. weekly and she
19 explains how she is enjoying coming to Purnell and is
20 starting to feel as though she is good at school. She
21 has been opening up and is willing to work on some of
22 her social anxiety surrounding school. She appears to
23 be really trying to find herself here and is enjoying
24 doing so. I think Purnell has been a great fit for J.
25 thus far."

1 Q Turning to the next two pages, have you ever
2 seen this report before?

3 A Oh, yes. Ah-ha, yes.

4 Q Without going through all the details does --
5 do you -- can you summarize for the Court what this
6 says from Megan DuVall?

7 A She just feels that J. is doing very well and has
8 changed dramatically since she first came and is just
9 having -- having a great experience.

10 Q I'm going to refer you to P-41.

11 MS. WARSHAW: I would like to move P-40 into
12 evidence.

13 THE COURT: Again, I'm not taking anything
14 into evidence until you guys figure it out. If there's
15 objections you'll make objections when we start at the
16 next session.

17 BY MS. WARSHAW:

18 Q I'm going to refer you to P-41.

19 A Yes.

20 Q Have you seen that before?

21 A Yes, hm-hm.

22 Q And can you briefly describe for the Court
23 what this is?

24 A This is from the Head of Purnell School, Ann
25 Glass, and it is a list of J.'s classes and her grade

1 point average or grade percentage.

2 Q And what is the date of this?

3 A "October 15, 2017."

4 Q So that would have been just the first
5 marking period. Correct?

6 A Yes.

7 Q I'm going to have you turn to P-42, have you
8 seen this before?

9 A Yes.

10 Q And can you briefly describe for the Court
11 what this is?

12 A This is J.'s -- she called it a, "Report Card,"
13 for Purnell for the academic year 2017/2018.

14 Q And what is your understanding of how J.H.
15 was doing in school during those marking periods?

16 A All "A's" from what I see.

17 Q I'm going to have you turn to P-43.

18 A Yes.

19 Q Have you seen this before?

20 A Yes, this is for the eleventh grade report card.

21 Q Okay. And, again, to your knowledge how is
22 J.H. doing at the Purnell School in these marking
23 periods?

24 A Again, all "A's".

25 Q I'm going to refer you to P-44, have you seen

1 this before?

2 A Yes, yes.

3 Q And can you briefly describe for the Court
4 what this is?

5 A This is a letter from the College Board who
6 administers the SAT to J.H. that she has been approved
7 for the following accommodations on the College Board
8 SAT tests and it lists the accommodations that she is
9 entitled to based on her disabilities or whatever you
10 call them.

11 Q And these accommodations from the College
12 Board are based on her Specific Learning Disability.

13 MS. HOWLETT: Your Honor --

14 THE COURT: Sustained.

15 BY MS. WARSHAW:

16 Q Is that your understanding?

17 MS. WARSHAW: Well, I need to know his
18 understanding of that.

19 MS. HOWLETT: It's -- (out of microphone
20 range)

21 THE COURT: Well, you need -- yeah, I'm going
22 to sustain it, you know.

23 MS. WARSHAW: Okay.

24 BY MS. WARSHAW:

25 Q Can you -- on the first page of the College

1 Board letter could you read the, "Accommodations," that
2 she was receive -- that she was approved for?

3 A "A four function calculator, the use of the
4 calculator for the Math sections that do not permit the
5 use of a calculator. Reading, 50 percent, time and a
6 half. Writing, 50 percent, time and a half.
7 Mathematics Calculations an additional 50 percent, time
8 and a half."

9 Q Do you recall ever drafting an affidavit?

10 A Yes.

11 Q Do you recall when that was?

12 A Oh, the affidavit? I don't recall when that was,
13 some time after the May 16th meeting.

14 Q And do you recall what was in that affidavit?

15 A Several things but -- but in that affidavit was a
16 detailed list of the -- all the problems that we had
17 with the Psychologist's Report and the IEP.

18 Q And to your knowledge did the School District
19 receive a copy of that?

20 A Yes.

21 Q I'm going to refer you to P-5 on the second
22 page.

23 A P-5, the second page, yes.

24 Q Is that the affidavit that you're describing?

25 A This is, yes.

1 THE COURT: P-5 is -- oh, it's the second
2 page.

3 THE WITNESS: The second page, right, it's an
4 affidavit?

5 THE COURT: Why are we revisiting an affidavit
6 filed in support of a motion for summary decision that
7 was denied?

8 MS. WARSHAW: Because he was -- he put down
9 all the information that was a concern and even then
10 there was still no discussion whatsoever about trying
11 to even get her back to school or anything like that
12 and that there was -- there was no issues. It was just
13 another proof that he has told the District over and
14 over again that there was issues.

15 THE COURT: He's testified that he's done
16 that.

17 MS. WARSHAW: Okay. I think we're done.
18 Thank you.

19 THE COURT: One second. Do you want to take a
20 lunch break before you start cross or do you want to
21 just work right through? It's up --

22 MS. HOWLETT: I'm going to be brief, I don't
23 think that it's going to take that long.

24 THE COURT: Okay.

25 MS. HOWLETT: But it's up to -- I know Your

1 Honor may want to take a break, so.

2 THE COURT: Nobody cares what I want.

3 THE WITNESS: How's your sugar?

4 THE COURT: My sugar is good today. Thank
5 you.

6 MS. HOWLETT: Your opinion is the only one
7 that really matters here, so.

8 THE COURT: I wish that were true -- no, I'm
9 only kidding.

10 MS. HOWLETT: I really -- I really will be
11 brief though.

12 THE COURT: Brief -- go ahead.

13 THE WITNESS: Well, excuse me, could I have a
14 drink of water?

15 THE COURT: You can -- you know what, yeah,
16 let's take a quick --

17 MS. HOWLETT: Okay. Yeah, that's fine.

18 THE COURT: -- a quick break.

19 MS. HOWLETT: Sure.

20 THE COURT: And then we'll start cross.

21 MS. HOWLETT: Yeah, that's actually -- (out of
22 microphone range)

23 THE WITNESS: Thank you.

24 THE COURT: I'll go check my blood sugar.

25 (BRIEF RECESS)

1 THE COURT: Ready?

2 MS. HOWLETT: Yes, Your Honor.

3 THE COURT: All right. After a brief break
4 we're back on the record and we're going to start
5 cross.

6 CROSS EXAMINATION BY MS. HOWLETT:

7 Q Hi, Mr. H. How are you?

8 A Hi.

9 Q I'm going to try and keep it as brief as
10 possible so we can keep it moving. So you testified
11 earlier that you said that you had a list of like 20
12 school that you were thinking about for J.H., why did
13 you compile that list of schools?

14 A Well, it was part of, you know, putting together
15 all the information we possible could to try and figure
16 out a solution for her situation.

17 Q So when was that that you put that together?

18 A That was -- when did we put that together? That
19 was I think after we realized that she couldn't go back
20 to the high school after the December 7th week.

21 Q So after December that's when you guys
22 explored sending her other places.

23 A Yeah, I believe so.

24 Q And is that when you mentioned Fusion to the
25 District as well?

1 A Well, we looked at it during that time and I
2 believe we started mentioning it, you know, at the --
3 at the IEP on April 6th.

4 Q Turning to the black binder --

5 A Hm-hm.

6 Q -- in front of you, it's going to be the tab
7 marked 3.

8 MS. HOWLETT: This was previously introduced,
9 Your Honor -- (out of microphone range) This is a
10 Referral -- a Pre-Referral Intervention Information
11 Form.

12 BY MS. HOWLETT:

13 Q In this -- on this form under, "Other
14 information you feel is pertinent to this referral," we
15 had previous testimony that I believe Joe Cusack had
16 prepared this form, it says, "Mr. and Mrs. H. explained
17 a private school setting, they have opted to keep J. at
18 WMC and pursue the CST evaluation." Is that accurate?

19 A "Explained a private school" -- yes, yes.

20 Q So this is dated, "January 3rd."

21 A "January 3rd."

22 Q So is it fair to say you had conversations
23 with Mr. Cusack before January 3rd about placing J. in a
24 private school, J.H.?

25 A Yes, yes, during that time we talked to the

1 Guidance Counselor about, you know, what various
2 options we had all along.

3 Q So that was before she was even classified.

4 Right?

5 A January 3rd -- yes.

6 Q And it was also before you received Dr.

7 Srinivasan's Report suggesting an out of District

8 placement. Is that correct?

9 A Yes.

10 Q So at the time that you discussed out of

11 District schools and private school placements with the

12 District at that time there was no clinical

13 recommendations that J.H. couldn't return to school.

14 A I'm sorry, repeat that again.

15 Q When you had this discussion with the staff

16 and with Mr. Cusack and compiled this list of private

17 schools at that time did you have any clinical

18 recommendations that J. --

19 A Oh, no. We were just analyzing the options.

20 Q And to the contrary ICCPC had actually

21 cleared J.H. to return to school on a part-time basis.

22 A Yes.

23 Q Which you later testified that it didn't work

24 out but that was the recommendations at that time.

25 A But for December -- yeah.

1 Q Okay. Earlier when your Attorney asked you
2 some questions about the eligibility determination
3 meeting you had testified that you made it clear at the
4 meeting that you wanted the classification changed. Is
5 that accurate?

6 A Correct, yes.

7 Q And then -- so what did you want the
8 classification changed to?

9 A Well, I didn't know what all the possible
10 classifications were but I knew that there were other
11 ones besides Emotionally Disturbed and I knew that that
12 one -- we didn't feel that that one was appropriate for
13 J.

14 So it was sort of at that point that I realized we
15 were kind of out of our depth with all the legal terms
16 and that we had to get help.

17 Q Understood. So what was your opposition to
18 the term, "Emotionally Disturbed?"

19 A Emotionally Disturbed I think to us connotated
20 that she, you know, had a mental illness, that she was
21 rebellious, that she was not -- you know, had
22 longstanding problems, which just didn't describe her.

23 THE COURT: I'm going to ask you a question,
24 did you have any idea what the -- what Emotionally
25 Disturbed meant in the context of Special Education at

1 that time?

2 THE WITNESS: At that time, no, I hadn't --

3 THE COURT: Thank you. That's all I needed to
4 know.

5 THE WITNESS: -- seen the list.

6 BY MS. HOWLETT:

7 Q You testified that at the May IEP meeting
8 that -- I have this language that you said but you can
9 correct me, you said, "No points were incorporated into
10 the IEP," I believe you were referring to the points
11 that you had brought up in the April meeting.

12 A Yes, yes.

13 Q And that your concerns weren't addressed.

14 A Right.

15 Q The IEP, however, does state that you and
16 your wife requested the Fusion Academy, so how do you
17 think the District got that information into the IEP?

18 A That -- was that in -- that was probably in the
19 first one, the April 6th. Right?

20 Q So that information must have been provided
21 -- was that information provided by you and Ms. H. to
22 the District that you were considering Fusion?

23 A Yes, somehow they -- that must have been provided.
24 I'm not sure when we would have mentioned that, I'm not
25 sure when we -- when we actually looked at Fusion.

1 Q So it's not accurate that none of your
2 concerns were or points were put into the IEP. Is that
3 correct?

4 A Well, okay, that's true, yeah. We were thinking
5 more of the corrections that we had from the April 6th
6 meeting.

7 Q Understood. You testified earlier that no
8 one had informed you that the BSP was a therapeutic
9 type of program.

10 A That's -- that's correct.

11 Q So at the May meeting Dr. Leigh didn't
12 discuss any of the therapeutic supports that the BSP
13 had to offer?

14 A Oh, in May, yes. Not at -- not in April, we
15 didn't know.

16 Q Okay.

17 A So we didn't know that until May, yeah.

18 Q I got it. Are you aware that the School
19 District is not permitted by law to implement an IEP --
20 an initial IEP without parental consent?

21 A Not allowed to without parental -- yeah. I guess
22 so, yeah.

23 Q So that unless you -- just bringing it back
24 to what's going on here, that if you and Ms. H. or one
25 of you did not sign the IEP that the District couldn't

1 provide J.H. with Special Education and Related
2 Services. Did you understand that?

3 A Well, they couldn't provide us with the IEP they
4 proposed, yes.

5 Q And are you aware that the "15 Day", quote
6 "Rule" that your Counsel brought up earlier, that that
7 doesn't apply in an initial IEP situation?

8 A No. Again, I didn't know all the legalese.

9 Q I got you. Earlier Ms. Warshaw also asked
10 you to look over some tuition documents, I think it was
11 marked as P-37 which we haven't moved yet, can we just
12 refer to that?

13 A Sure.

14 Q It's the blue binder, Mr. H. Thank you.

15 THE COURT: I'm going to pause for just -- I
16 got to run and get another pad.

17 MS. HOWLETT: Sure.

18 THE COURT: No, I didn't pause it, Hold on.

19 (BRIEF PAUSE)

20 THE COURT: Okay. Go ahead.

21 BY MS. HOWLETT:

22 Q If you could just turn to the second document
23 in P-37 --

24 THE COURT: 37 or 47?

25 MS. HOWLETT: 37.

1 THE COURT: Thank you.

2 BY MS. HOWLETT:

3 Q It looks like a cancelled check, is that
4 accurate? Is that one of your cancelled checks or a
5 check that was --

6 A That was cashed by the school, yes.

7 Q That was cashed and it was cashed by what
8 school, the Purnell School?

9 A The Purnell School, yeah.

10 Q And what's the date of that check?

11 A "August 31, 2017."

12 Q Okay. And if you could just turn to P-35,
13 and you testified earlier that that's the letter that
14 you sent to the District to advise the District that
15 you were enrolling J.H. into the Purnell School. Is
16 that correct?

17 A Yes.

18 Q I'm sorry, you needed a second to get there,
19 sorry.

20 A Yes.

21 Q And do you see when it's marked "Received" by
22 the District at the bottom?

23 A "Received 9 -- September 25th."

24 Q And your letter otherwise doesn't appear to
25 be dated, do you know when this was actually sent to

1 the District? If you recall, it doesn't have a date on
2 it, so.

3 A I think it was whenever the requirement was that
4 we had to inform the school that we weren't coming
5 back. I don't recall when in September that was but
6 there was some requirement that we had to tell them or
7 less, you know, the Truant Officers would come.

8 Q Right, I get you.

9 A Yeah.

10 Q Do you know why there's a discrepancy that
11 you paid the Purnell School on August 31st but the
12 District didn't receive notice that J.H. was going to
13 the Purnell School until the end of September?

14 A Well, we had to, you know, put a down payment on
15 Purnell just to make sure she had some place to go and,
16 you know, we were hoping to -- that we could resolve
17 something, but we had to keep our options open at that
18 point because we didn't know what was going to happen.

19 Q After sending this letter to the District did
20 you ever send any subsequent letter requesting --
21 specifically requesting a new IEP?

22 A Which letter?

23 Q Oh, I'm sorry. After you sent -- you and Ms.
24 H. sent P-35 to the District, that's the one you're
25 looking at.

1 A Oh, yeah, yeah. Okay.

2 Q After that did you ever write a second letter
3 requesting an IEP from the District?

4 A After September --

5 Q If you recall.

6 A -- 25th, I don't recall the dates. No, I don't
7 recall.

8 Q Did you ever write a subsequent letter to
9 the District indicating your intent to re-enroll J.H.
10 in the District?

11 A Attempt to re-enroll, I don't -- I don't believe
12 so.

13 Q Are you aware that the District is not
14 required to provide a student that's not enrolled in
15 the School District with an IEP?

16 A Not enrolled -- yes, correct.

17 Q You testified earlier that J.H. was diagnosed
18 with a Learning Disability or at least that was your
19 understanding. Is that accurate?

20 A Yes, yes.

21 Q Do you know is the Purnell School approved
22 for Special Education?

23 A Special Education, no.

24 Q Are -- the teaching staff members, are they
25 Special Education Teachers? Do you know?

1 A I don't know.

2 Q Is J.H. receiving services at the Purnell
3 School related to her noise sensitivity?

4 A No, just the -- just the nature of the school
5 helps her there.

6 Q Do you recall when you filed for due process
7 or when through Counsel you filed a petition for due
8 process? Do you remember when that was?

9 A I believe it was some time after the May 16th
10 meeting.

11 Q It's actually marked as P-1, your Due Process
12 Petition. I believe it is, at least that's what I have
13 -- (out of microphone range)

14 THE COURT: Nope.

15 MS. HOWLETT: Do you see it, Your Honor, P-1?

16 THE COURT: Well, that's the -- I'm looking
17 for the --

18 MS. HOWLETT: I mean, it's a matter of record,
19 so it's --

20 THE COURT: Yeah. "5/30."

21 MS. HOWLETT: Right.

22 BY MS. HOWLETT:

23 Q May 30th, does that sound like that would be
24 about right?

25 A That sounds about right, yeah.

1 Q Okay. So all the reports that Ms. Warshaw
2 had asked you about before, they were all prepared
3 after this matter was already in litigation. Isn't
4 that correct?

5 A Correct.

6 MS. HOWLETT: I believe that's all the
7 questions I have, Your Honor.

8 REDIRECT EXAMINATION BY MS. WARSHAW:

9 Q Okay. Mr. H., I'm going to refer you back to
10 P -- I'm sorry, R-3.

11 A R-3, yes. The, "Pre-Referral Intervention
12 Information."

13 Q Did you write or sign this document?

14 A No.

15 THE COURT: R-3. Right? I'm sorry.

16 MS. WARSHAW: R-3.

17 THE COURT: I was making a note for myself.

18 R-3. Okay.

19 BY MS. WARSHAW:

20 Q Do you recall the first time that you ever
21 saw this document?

22 A No, actually I don't remember this one.

23 Q When your daughter went to see Dr. Hanna was
24 it in preparation for litigation or was it a follow-up
25 from what Dr. Shuberth had diagnosed her with?

1 A It was a follow-up from Dr. Shuberth because she
2 had recommended that we have Audiologist check her out.

3 Q Do you recall the date that the Purnell
4 School started for the 2017/18 school year?

5 A The date they -- no, I don't recall the date.

6 MS. WARSHAW: I have no further questions.
7 Thank you.

8 THE COURT: You can step down. Thank you.

9 THE WITNESS: Thank you.

10 THE COURT: Okay. Again, since you guys don't
11 listen to me, are you taking lunch or are we going to
12 work through?

13 MS. WARSHAW: We'll work through.

14 THE COURT: Okay. You didn't even ask your
15 adversary if she agreed with that.

16 MS. HOWLETT: I would like to work through.

17 THE COURT: Okay. Thank you.

18 MS. HOWLETT: Thank you.

19 MS. WARSHAW: Okay. I'm going to call Mrs. H.

20 THE COURT: Have a seat. Raise your right
21 hand.

22 M. H., PETITIONER SWORN.

23 THE WITNESS: I do.

24 THE COURT: State your name.

25 THE WITNESS: M.H. -- (The Petitioner states

1 her name)

2 THE COURT: You don't have to spell your last
3 name, your husband already did it. Proceed.

4 MS. WARSHAW: Okay.

5 DIRECT EXAMINATION BY MS. WARSHAW:

6 Q Mrs. H., we're going to try very hard not to
7 repeat what your husband has said so it won't be
8 duplicative, so we'll do the best we can. Okay. Can
9 you please describe for the Court your knowledge about
10 what if anything occurred in middle school with your
11 daughter?

12 A Yes, in middle school in eighth grade that's when
13 she first started having panic attacks and ended up at
14 the Nurse's office due to her fear of two of the
15 Teachers in middle school.

16 Q And was she having any issues academically in
17 middle school?

18 A Well, eighth grade her grades slipped a bit but
19 generally they were good.

20 Q Do you know why her grades slipped a bit in
21 eighth grade?

22 A Yeah, because she was anxious about situations in
23 school.

24 Q And can you describe for the Court what if
25 anything happened in ninth grade for your daughter?

1 A In ninth grade she pretty much -- she tried very
2 hard to keep it together and she kept a lot to herself.

3 Q How did she do academically in ninth grade?

4 A I think she did pretty well in ninth grade.

5 Q The beginning of tenth grade --

6 A Hm-hm.

7 Q -- did -- can you describe for the Court what
8 you believe happened?

9 A So she started the year off and then I think it
10 was only a couple weeks in I think I had to pick her up
11 from school and she was -- you know, confided to me
12 that she was suffering from depression and at that
13 point I immediately started researching for therapists.

14 Q And do you know what the basis for her
15 depression was?

16 A Well, it's hard to say exactly but certainly the
17 school anxiety was a factor.

18 Q Do you know why she was suffering from school
19 related anxiety and what was the basis for that?

20 A Difficulty in relationships with other people and
21 overwhelmed by the -- just the general experience of
22 the big high school.

23 Q Can you describe for the Court what happened
24 after she initially told you that she was depressed?

25 A Then actually I think I sent her back to school

1 the next day and then I think I realized the enormity
2 of it and then took her to -- through a recommendation
3 of a friend I took her to ICCPC in Parsippany and then
4 she was let in I believe the Monday. I think I took
5 her on a Friday and they talked to her and then she
6 started on Monday.

7 Q Okay. And that was a part-time day program.
8 Is that what it is?

9 A Yeah, I believe it was 9 to 2 or 2:30, hm-hm, and
10 then the rest was tutoring.

11 Q Did there come a time where you notified the
12 school that she was having issues?

13 A Yeah, pretty much almost from the beginning and
14 first I reached out to all her Teachers by email and
15 Mr. Cusack because at that point I didn't really know
16 -- I didn't really know what was going on and I just
17 said she was having some difficulties right now.

18 Q And at some point was your daughter placed on
19 home instruction?

20 A Yes.

21 Q Can you describe for us what events
22 transpired that that came about?

23 A She completed her program at ICCPC in the middle
24 of December -- well, I'm sorry, prior to that the
25 intent was to complete her program and then to return

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1 to West Morris. She tried to return to West Morris for
2 a couple days and found it overwhelming, so then at
3 that point after the Christmas break she started home
4 instruction from I think it was like January 4th to the
5 end of June and completed her sophomore year.

6 THE COURT: She stayed on home instruction
7 through the end of the sophomore year.

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 BY MS. WARSHAW:

11 Q When did J.H. start seeing Melissa Dolgos?

12 A That was from the beginning when she was in
13 Parsippany so that would be October 2016 -- yeah, 2016.

14 Q And to your knowledge did -- at any time did
15 Melissa Dolgos indicate that J.H. had behavior issues?

16 A No.

17 Q At any time did J.H. receive a 504 Plan?

18 A She did on the first day of December I think -- I
19 guess it was December 6th or 7th, I don't remember. We
20 sat down in Joe Cusack's office and he showed us that
21 504 Plan which I believe we signed.

22 Q Once your daughter was placed on home
23 instruction had did she do academically?

24 A She did fine, she did very well.

25 Q And when she was on home instruction how was

1 her anxiety levels?

2 A It was much lower.

3 Q And did there come -- there came a time that
4 J.H. was evaluated by the Child Study Team, did you
5 request that or did the School District request it?

6 A We requested that.

7 Q Just going back I'm going to show you what's
8 been marked P-19, did you sign this letter?

9 A Yes.

10 Q And that was sent to Mr. Cusack. Is that
11 correct?

12 A Yes.

13 Q I'm going to refer you to P-25, is that your
14 signature on the first page?

15 A Yes.

16 Q And I'm going to refer you to the last page,
17 is that your signature on the last page?

18 A Yes.

19 Q And when you signed this agreement or this
20 page --

21 A Hm-hm.

22 Q -- what did you think that you were signing?

23 A We thought we were moving ahead with trying to
24 find a solution for J. because once we signed this I
25 believe it was maybe a day or two afterwards we went to

1 see the BSP Program. We thought we were moving ahead
2 to try and find a solution for her and we thought that
3 was just fast tracking the -- the 15 day notice.

4 Q Does it say anywhere that your daughter would
5 be classified as Emotionally Disturbed?

6 A No.

7 Q Were you ever told by anybody what
8 Emotionally Disturbed meant?

9 A No.

10 Q Did you ever object to your daughter being
11 classified as Emotionally Disturbed?

12 A Yes.

13 Q And do you recall when that was?

14 A Yes, that was the April 6th meeting. We came in
15 with our highlighted copy of the report and went
16 through all the things that were inaccurate.

17 Q And do you -- you mentioned a, "Report,"
18 which report did you bring in that was highlighted?

19 A It was Sherry Wilk's Psychological Evaluation, I
20 don't know the exact title of it.

21 Q I'm going to show you what's been marked
22 P-22, is that the report that you're referring to?

23 A Yes, that's it.

24 Q Okay. In your words can you please tell us
25 what your issues were with regard to this report?

1 A Well, it just characterized her inaccurately I
2 thought. I mean, you know, it looked like she was
3 belligerent, it looked -- that she refused to go to
4 school, I interpret that as being belligerent. It said
5 she was hospitalized and she wasn't, she was in a day
6 program, you know, and it had -- it had a bunch of
7 errors in it.

8 I thought her personality was not char -- you
9 know, we filled out these multiple choice forms and
10 they claim that they took the information from them and
11 put it in here but it didn't -- it did not at all
12 accurately describe her.

13 Q Do you believe that those inaccuracies
14 affected the outcome of that report?

15 MS. HOWLETT: Objection, Your Honor --

16 THE COURT: Sustained.

17 MS. HOWLETT: -- it's speculative.

18 THE COURT: She's not in Ms. Wilk's head.

19 THE WITNESS: I'm sorry, could you say that --

20 THE COURT: Don't answer the question I
21 sustained the objection.

22 THE WITNESS: Oh.

23 BY MS. WARSHAW:

24 Q Do you believe that that report inaccurately
25 described your daughter?

1 A Yes.

2 Q Do you request at any time that changes be
3 made to that report?

4 A Yes.

5 Q When did you request the changes?

6 A April 6th.

7 Q Did there come another time when you also
8 requested that these -- the changes be made?

9 A Yeah, I believe we brought it up at the May 16th
10 meeting as well.

11 Q And to your knowledge were any of these
12 changes ever made?

13 A Not to my knowledge.

14 Q Can you describe for us what happened at the
15 April 6, 2017 IEP meeting?

16 A Yes. So, as my husband mentioned, we were brought
17 to the meeting and J. was to sit in the hallway and we
18 thought it was going to be for a brief period of time
19 but she was stuck out there for quite a long period of
20 time. Then she was called in with us and we, once
21 again, went over the information from the reports and
22 her IEP proposed -- the proposed IEP for her.

23 Q And what if anything happened?

24 A Well, it was a very uncomfortable situation
25 because we had already made the corrections and then

1 once J. was in there she -- Mrs. Wilk was telling her
2 these were -- "This is what we are going to do," and J.
3 said, "What are my other options?" And she said,
4 "Well, this is it, this is what we're proposing," and
5 that's when J. was upset.

6 Q Did you have any other concerns that you
7 raised at the April 6, 2017 IEP meeting?

8 A Related to the -- creating a new IEP, relating to
9 the report?

10 Q Okay. Let me clarify. Did you receive a
11 copy of an IEP at the April 6, 2017 IEP meeting?

12 A Yes.

13 Q And what programs specifically did it refer
14 to as the proposed placement for J.H.?

15 A For the Behavioral Support Program in Mendham.

16 Q And did you have any objections to that
17 program at that time?

18 A No, because I hadn't seen it then.

19 Q Did you describe any -- did anybody describe
20 for you what that program was at that IEP meeting?

21 A Yes, Mr. Cusack explained a little bit of it and
22 then the woman that used to work at that program was
23 walking by the office and they pulled her in to explain
24 a little bit more information about the meeting (sic).

25 Q And do you recall what they explained to you

1 about what the Behavioral Support Program at Mendham
2 was?

3 A Yeah, you know, she said it was -- I don't
4 remember her exact words but that it was in a
5 self-contained room and that it's a smaller group of
6 kids and it was to encourage kids to try to get to
7 school and she talked a little bit -- she may have
8 talked about the point system and she talked about the
9 flexibility to get the kids to complete their work, I
10 don't remember a lot of details, no.

11 Q Okay. Did there come a time when you did go
12 see the Behavioral Support Program?

13 A Yes, I did.

14 Q Did you speak to anybody there?

15 A Yes, I did.

16 Q Did anybody go with you to see the program?

17 A J. and I went to see the program.

18 Q And who did you speak to when you got there?

19 A First we were downstairs and we spoke to Tracy
20 Costa.

21 Q And what did Ms. Costa tell you?

22 A Well, she sort of was giving us an idea about the
23 program and she said, "Basically we're trying to get
24 the kids to just get in the door and get to school and
25 make it through as much of the day as possible." She

1 told us about the point system, the reward systems, the
2 special trips. She told us how -- about getting work
3 from the mainstream Teachers, I don't remember too much
4 else.

5 Q Did she mention anything about the course
6 offerings in the Behavioral Support Program?

7 A I don't remember if we talked specifically about
8 course offerings then. I think she -- I think we knew
9 that -- I think what she told us was that if we did
10 need to take a higher level course that we would have
11 to go into the mainstream classes -- she would have to
12 go into the mainstream classes.

13 So I knew we were talking about something like
14 Physics and she said, "No, that wasn't offered, you
15 would have to go into the mainstream class."

16 Q Do you recall if there were any other courses
17 that were not offered at the Behavioral Support
18 Program?

19 A Well, obviously they can't do Gym or any of the
20 other electives. I think if it was a language you had
21 to have it on the EduShare, which is that computer
22 program, so it was -- and when we went -- I'm sorry, go
23 ahead.

24 Q No, no. Go ahead.

25 A No, when we -- then we -- then J. and I went up to

1 the room and we saw the kids in the BSP Program and
2 they were -- several of them were on their own doing
3 their own thing and working on their computers.

4 Q Can you describe where this Behavioral
5 Support Program is located in the high school?

6 A Yeah, I remember it being on the second floor so
7 you had to work through the hallways to get there, up
8 the stairs and down the hall to the room.

9 Q And what did you -- was it one room or two
10 rooms?

11 A I believe it was one room, a room smaller than
12 this room.

13 Q And do you recall how many students were in
14 that room?

15 A At that particular time maybe -- maybe ten, I
16 don't remember exactly.

17 Q Did you speak to anybody else while you were
18 at the Behavioral Support Program?

19 A I did but I don't remember talking about -- I
20 think she told me a little bit, like there was a
21 Teacher's Aide in the room, maybe one or two, I don't
22 remember. I don't remember going into any detail about
23 the room with her but I seem to remember having
24 conversations about the kids going in and out a lot.
25 Some kids would go in, some kids go out, back and forth

1 to the mainstream and back in again.

2 Q Do you recall if they mentioned it was a
3 behavior class or was it more of a psychological or
4 psychiatric class?

5 A I never heard anything about psychiatric or -- I
6 just knew it was called the, "Behavioral Support
7 Program," that was the title that I was told it was
8 called.

9 Q Did anyone ever explain to you the types of
10 issues the children had who are in the Behavioral
11 Support Program?

12 A I believe Tracy Costa said that most of the kids
13 have trouble getting to school or staying in school,
14 getting to school and staying in school. So the
15 emphasis -- what I took away from that meaning it was a
16 point system for staying in school.

17 Q After seeing the Behavioral Support Program
18 at Mendham High School did you believe that it was a
19 good fit for J.H.?

20 A No. And I actually let, you know, J.H. decide,
21 "What do you think," you know, "How do you think this
22 will work?" And we both talked about it and she didn't
23 think so and, no, I didn't think it would work for her
24 because well, physically, first of all it's in a big
25 building and she has to navigate to the room and out of

1 the room, if she wants to go to more advanced classes
2 my understanding was that she had to go to mainstream
3 classes.

4 People were working individually on their
5 computers, it wasn't like a Teacher in a class
6 teaching. It was everybody doing their own work and it
7 didn't seem like -- it reminded me of when I used to
8 work in the Resources -- the Resource Rooms in school,
9 so everybody doing their own thing and it just didn't
10 seem appropriate for her.

11 I can't speak to what the intentions were of the
12 kids in there but it didn't seem like a highly academic
13 college bound program.

14 Q Did you ever express your concerns about the
15 Behavioral Support Program to the Child Study Team?

16 A Yes.

17 Q When was that?

18 A Let's see, so we went -- I don't remember
19 specifically. I know we went after the April meeting,
20 I don't know the date that we went to go see it. I
21 don't remember if it was before the May 16th meeting or
22 at the May 16th meeting.

23 Q And what if anything was the response to you
24 sharing your concerns about the Behavioral Support
25 Program to the Child Study Team?

1 A I don't think there were any other options at that
2 point or they didn't give us any other alternatives.

3 Q The IEP that was presented to you at the May
4 16, 2017 IEP meeting, was that the same IEP that was
5 drafted in April of -- 6th of 2017?

6 A Yes, I believe so.

7 Q When the May 16, 2017 IEP meeting occurred
8 you were handed an IEP -- an IEP, did you have any
9 input into the formulation of that IEP?

10 A No.

11 Q Had you ever been consulted about what your
12 concerns were or anything to put in that IEP?

13 A No.

14 Q After you expressed concerns about the
15 Behavioral Support Program at the May 16, 2017 IEP
16 meeting, were any changes made to the IEP?

17 A No.

18 Q Have you ever heard of the Being Successful
19 Program?

20 A Not until I saw it in the book that was presented,
21 the binder.

22 Q To your knowledge the program that was
23 presented for your daughter was the Behavioral Support
24 Program --

25 A Yes.

1 Q -- at the Mendham High School.

2 A Yes, it was in the IEP. That's what it said the
3 Behavioral Support Program.

4 Q Is there any difference to your knowledge
5 between the Behavioral Support Program at the Mendham
6 High School versus the one at West Morris or West --
7 sorry, Morris Central?

8 A No, the only -- what I remember from the April 6th
9 meeting was that Joe Cusack saying that maybe it would
10 be better for her to go to the Mendham BSP Program but
11 I don't remember any details as to why, other than it
12 not being in West Morris Central.

13 Q Was it your understanding that the Behavioral
14 Support Program at Mendham had the same grade level or
15 multi-grade levels?

16 A Multi-grade levels.

17 Q When was the first time that you heard about
18 the Purnell School?

19 A Well, as my husband mentioned there was a list
20 that we -- initially we were in sort of "What do we do"
21 kind of panic and we started looking at schools, but I
22 didn't -- but we did not seriously consider it at all,
23 in fact I think it was crossed off the list, until May
24 -- at the May meeting when Dr. David Leigh suggested we
25 go look at it.

1 Q Do you recall the date that you first went to
2 see the Purnell School?

3 A I actually do, I think it was May 25th.

4 Q After the May 16, 2017 IEP meeting did you
5 have any correspondence with anyone from the District
6 regarding an IEP or a 504 Plan?

7 A I don't believe so, no.

8 Q Did you ever reach out to Kendra Dickerson
9 regarding an updated IEP?

10 A I believe I did in an email.

11 Q I'm going to show you P-29, can you tell me
12 if you recognize those emails?

13 A Hm-hm, yes.

14 Q Did you write them?

15 A Yes.

16 Q And at the time that you wrote this, "August
17 25, 2017," email to Kendra Dickerson --

18 A Yes.

19 Q -- had you seen Dr. Shuberth's Report?

20 A Let's see, I'm trying to remember exactly when I
21 saw it. I think I was waiting from the school -- I was
22 waiting for the school to send me the report because I
23 was told that the Psychologist wanted to go over the
24 report with me but it took a while to get that.

25 Q Did the Psychologist ever go through the

1 report with you?

2 A I don't believe so.

3 Q What was your understanding as to Dr.

4 Shuberth's Report?

5 A Well, I was really glad she had the evaluation
6 done because I would see that she had -- we suspected
7 it but it was then confirmed that she did have a Math
8 learning disability.

9 Q And you say that you, "Suspected," that she
10 had a Math learning disability, can you elaborate on
11 that a little bit?

12 A Well, she had some struggles with memory and
13 calculation and that she just -- that I sort of noticed
14 over the years and it sort of -- it confirmed what I
15 suspected.

16 Q Did Dr. SHuberth make any recommendations
17 about a follow-up for J.H.?

18 A Yes, she recommended to have -- to have her tested
19 by an Audiologist.

20 Q I'm going to refer you to P-34, is this the
21 report that you talked about --

22 A Yes.

23 Q -- from the Audiologist?

24 A Yes.

25 Q Okay. I'm going to also refer you back to

1 P-32, the first page, can you just tell me what that is
2 as well?

3 A This is a letter from Dr. Shuberth confirming
4 that, "J. meets the criteria for, "F81.2, Specific
5 Learning Disorder with impairment in Mathematics,
6 specifically with fluent calculation, moderate
7 dyscalculia -- dyscalculia."

8 Q Prior to the first day of school, of public
9 school, did you have any IEP in place?

10 A For the 2017 school year, no, none that was
11 appropriate.

12 Q Prior to the first day of school, of public
13 school, did you have an updated 504 Plan in place?

14 A No.

15 Q What was the date that J.H. started at the
16 Purnell School?

17 A I think it was September 11th or about that, if
18 that was a Monday, it was the Monday.

19 Q As of September 11th had you heard back from
20 the District regarding any changes or modifications to
21 the proposed IEP?

22 A No. The only -- I had a conversation with Kendra
23 and Joe and they mentioned that she would be entering
24 the school as a general ed student with a 504 Plan,
25 that was a phone conversation in I think the end of

1 August.

2 Q Did you have any meeting for updating the 504
3 Plan for the start of the 2017/2018 school year?

4 A No.

5 Q Did you have any input into the 504 Plan
6 proposed for the 2017/18 school year?

7 A No.

8 Q Did there come a point in time where J.H.
9 started improving and -- emotionally and needed a
10 different environment from home school -- home
11 instruction?

12 A Yes, in fact when we were talking to Dr. Shuberth
13 at the initial interview -- and I believe that was the
14 beginning of August, she had an interview and she asked
15 J. if she was ready to try and go back to school and
16 she said, "Yes," she was, she was ready to try a new
17 school.

18 THE COURT: To try a new school, is that what
19 you said?

20 THE WITNESS: She said she was ready to try --
21 I don't remember if she said a new school or whether
22 she said a school, I can't -- I don't know for sure,
23 school.

24 BY MS. WARSHAW:

25 Q I'm going to show you what's been marked

1 P-28, have you seen this document before?

2 A Yes.

3 Q And can you briefly describe what this
4 document is and when it's dated?

5 A Its dated, "August 17, 2017," and it's a letter
6 from Melissa Dolgos talking about what would be the
7 best environment for J. and school.

8 Q And to your knowledge was this sent to the
9 School District prior to Dr. Shuberth's Report?

10 A I believe so because I think Dr. Shuberth's Report
11 was like the 21st of August.

12 Q To your knowledge did Melissa Dolgos ever
13 speak to or have any interactions with Dr. Shuberth
14 regarding your daughter?

15 A Not that I know of.

16 Q I'm going to show you what's been marked
17 P-33, have you seen this document before?

18 A Yes.

19 Q And can you just briefly tell the Court what
20 this is?

21 A This is the evaluation by Dr. Platt that was done
22 at the end -- the very end of the summer I believe.

23 Q To your knowledge did Dr. Platt indicate J.H.
24 Had a Specific Learning Disability?

25 A Yes.

1 Q Following receipt of this Psychiatric Report,
2 the independent evaluation by Dr. Platt, did the School
3 District indicate that it would change or modify or
4 alter in any way the IEP that was proposed at the May
5 16, 2017 IEP meeting?

6 A No.

7 Q What prompted you to unilaterally place your
8 daughter at the Purnell School?

9 A It was her junior year of high school and we had
10 to make an important decision, we couldn't have her
11 languishing, you know, and maybe getting into the room
12 and maybe not getting into the room at the BSP in
13 Mendham.

14 I couldn't -- we couldn't gamble on that to see if
15 she would -- you know, if she would even walk in the
16 door and to waste weeks and months struggling with her
17 anxiety and trying to even get into a place and then
18 not even have a rigorous curriculum to go -- on top of
19 that, it was just not an appropriate placement for her.

20 Q Do you believe that you did everything you
21 could to work with the District to come up with an
22 appropriate placement for your daughter?

23 A Yes, absolutely. And my I comment about the Platt
24 --

25 THE COURT: No.

1 THE WITNESS: Okay.

2 THE COURT: You can only ask -- answer the
3 questions --

4 THE WITNESS: Okay.

5 THE COURT: -- that are asked.

6 THE WITNESS: Okay.

7 THE COURT: Which I'm sure you're going to be
8 asked in about ten seconds. Go ahead.

9 THE WITNESS: Okay.

10 BY MS. WARSHAW:

11 Q What if anything were your impressions with
12 regard to Dr. Platt's Report?

13 A Well, related to Dr. Platt's Report the -- we
14 repeatedly tried to get this appointment to have it
15 before September and it was held up at the Board
16 Office. We called multiple times to try and get her in
17 there so we could get a proper consultation and before
18 West Morris started so we would know what to do.

19 Q I'm going to show you what's been marked P-35,
20 do you recognize this document?

21 A Yes.

22 Q There is no date on this document for when it
23 was written. Is that correct?

24 A That is correct.

25 Q Okay. Since your daughter started at the

1 Purnell School have you noticed any changes in her?

2 A Yeah, huge changes. As my husband commented,
3 she's just a different person now. It's a very calming
4 experience there because it's set up like a -- almost
5 like a family farm and it's -- she receives a lot of
6 support there.

7 At the Purnell School, even though it's not
8 technically a therapeutic school, it has a tremendous
9 amount of support and therapy, as she has a Counselor,
10 she has an Advisor, and there is a Learning
11 Psychologist there as well.

12 Q And with regard to the noise level there has
13 she commented about that?

14 A Yeah, it's pretty non-existent. Also, they have
15 -- she has a quiet place where she can rest in between
16 classes. It's sort of set up like a -- almost like a
17 college schedule that you can go back and rest between
18 classes, it's very quiet there.

19 Q And academically does she have supports in
20 her classes as well?

21 A Yeah. And she also -- her Math Teacher is also a
22 Special Ed Teacher. I just wanted to let you know, she
23 has a Special Ed Math Teacher and they do what they
24 call, "Reverse learning," where they watch a video and
25 then they do all their work in the class in very small

1 groups, there's maybe six or eight girls in each class.
2 You cannot fall under the crack -- in the crack --
3 under the cracks in that school, it's just not
4 possible, there's -- it's a very small group of people.

5 Q Do they have any social supports for her?

6 A They have lots of social supports. Social
7 therapeutic or social -- in what aspect of social?

8 Q Do they promote friendships in any way?

9 A Yeah, absolutely. She's made two very dear
10 friends and because it's such a small group of girls
11 it's -- it's a family atmosphere.

12 Q Do they have any group meetings or anything
13 like that that would promote socialization?

14 A All the time. I mean, they have morning meetings
15 three times a week, you know, they eat lunch together,
16 it's a very close knit group.

17 MS. HOWLETT: Your Honor, are we testifying
18 based upon a factual basis or personal knowledge? I'm
19 sorry for -- (out of microphone range)

20 THE COURT: I have no idea, I was waiting for
21 you to object.

22 MS. HOWLETT: Okay. I've been wanting to, I'm
23 objecting.

24 THE COURT: Okay. Is this on personal
25 observations or discussions with J.?

1 THE WITNESS: I'm sorry?

2 THE COURT: Is your testimony based on
3 personal observations or discussions with J.?

4 THE WITNESS: Personal observations.

5 THE COURT: Okay. I'll allow it.

6 BY MS. WARSHAW:

7 Q Is your daughter attending the Purnell School
8 every day or is she having any absentee issues?

9 A Every day.

10 Q I showed your husband some reports from Megan
11 DuVall and Ms. Glass regarding your daughter at the
12 Purnell School, have -- were you aware of those reports
13 as well?

14 A Yes.

15 Q And I also showed your husband report cards
16 from the first few marking periods as well as the third
17 marking period for your daughter at the Purnell School,
18 were you aware of those as well?

19 A Yes.

20 Q To your knowledge has J.H. ever been a
21 behavior issue?

22 A No.

23 Q Would you consider her a disaffected learner?

24 A No.

25 Q Has -- to your knowledge has she ever had a

1 pattern of school failure?

2 A No.

3 Q To your knowledge has she ever been defiant
4 of school rules?

5 A No.

6 Q Has -- to your knowledge has J.H. ever
7 refused to attend school?

8 A No. She didn't refuse to attend school, she was
9 unable to attend school.

10 Q To your knowledge is the Purnell School one
11 that gets the students into college?

12 A They have a hundred percent rate of college attend
13 -- attendance.

14 Q Does the Behavioral Support Program have a
15 hundred percent rate of getting kids into college to
16 your knowledge?

17 A Not to my knowledge.

18 MS. HOWLETT: Your Honor, I object, I don't --
19 (out of microphone range)

20 THE COURT: Yeah, sustained.

21 MS. WARSHAW: So it's --

22 THE COURT: Well, how does she know that?

23 MS. WARSHAW: I'm just asking, maybe she asked
24 the question, maybe she read about it.

25 THE COURT: And she said, "Not to my

1 knowledge."

2 MS. WARSHAW: Okay. Then not to her
3 knowledge.

4 THE COURT: Sustained, the question wasn't
5 asked.

6 MS. WARSHAW: No further questions.

7 THE COURT: Cross?

8 MS. HOWLETT: No, I have no questions, Your
9 Honor.

10 THE COURT: You may step down. Thank you.

11 THE WITNESS: Okay.

12 THE COURT: Somebody is not efficient because
13 we need more witnesses.

14 MS. WARSHAW: I didn't know who her witnesses
15 were going to be, so I kind of -- (out of microphone
16 range)

17 THE COURT: You got a witness list, that's all
18 you get. That's all you get, you keep asking -- you
19 keep raising the same issue.

20 MS. WARSHAW: I do -- (out of microphone
21 range)

22 THE COURT: I mean, I tried cases for 35
23 years, you get a witness list, you get -- they don't
24 tell you when they're going to show up, they don't tell
25 you if they're going to call them or not going to call

1 them. You get a witness list, that's all you get,
2 that's all you ever get.

3 MS. WARSHAW: I just needed another day --
4 (out of microphone range) So I didn't know, I planned
5 for two witnesses.

6 THE COURT: That's fine, I mean, that wasn't
7 unreasonable. It was more of a joke on my part that we
8 weren't efficient because we did move quickly.

9 MS. WARSHAW: I wasn't repetitive. Right?

10 THE COURT: No, no.

11 MS. WARSHAW: Okay.

12 THE COURT: Well, yeah, a little bit but
13 that's okay. All right. So when is our next date?

14 MS. WARSHAW: July -- (out of microphone
15 range)

16 THE COURT: It's July?

17 MS. HOWLETT: Yeah, the end of July I think.

18 THE COURT: All right. That gives you guys
19 plenty of time to go through your respective books and
20 come up with one that has everything. I understand
21 there's going to be some -- some that's not redundant,
22 but not a lot, and those things that are not redundant
23 that have been -- that have been marked and discussed
24 you could move them when we start.

25 We'll do that on the record and if there's

1 any objection to anything we'll discuss it then and
2 I'll rule on it then.

3 MS. WARSHAW: Okay.

4 THE COURT: I anticipate most of it is going
5 to come in. All right. Thank you.

6 MS. HOWLETT: Thank you.

7 MR. H.: Thank you, Your Honor.

8 MS. H.: Thank you.

9 MS. WARSHAW: Thank you.

10 {Whereupon, the proceedings were adjourned.}

11 * * * * *

1 STATE OF NEW JERSEY }

2 COUNTY OF ESSEX }

3
4 I, Deborah Plyler, assigned transcriber, do
5 hereby affirm that the foregoing is a true and accurate
6 transcript of the proceedings in the matter of F.H. and
7 M.H. On Behalf Of J.H. vs. West Morris Regional High
8 School Board of Education, bearing Docket No. EDS
9 10706-17, heard on April 23, 2018 before the Office of
10 Administrative Law Court.

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO. EDS 10706-17

_____	:	
F.H. and M.H. on behalf	:	
of J.H.,	:	
	:	
Petitioner,	:	
	:	TRANSCRIPT
-vs-	:	OF
	:	RECORDED PROCEEDINGS
WEST MORRIS REGIONAL	:	
HIGH BOARD OF EDUCATION,	:	
	:	
Respondent.	:	
_____	:	

July 25, 2018

BEFORE:

THE HONORABLE THOMAS BETANCOURT, A.L.J.

APPEARANCES:

WARSHAW LAW FIRM, LLC
By: Julie Warshaw, Esq.
Attorney(s) for the Petitioner

CLEARY GIACOBBE ALFIERI JACOBS LLC
By: Jodi S. Howlett, Esq.
Attorney(s) for Respondent

Transcriber: Lee A. Romano
CRT SUPPORT CORPORATION
2082 Highway 35, P.O. Box 785
South Amboy, N.J. 08879
Phone: (732) 721-4330
Fax: (732) 721-7650

I N D E X

2

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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MELISSA DOLGOS

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ELLEN M. PLATT

By Ms. Warshaw	64		97	
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E X H I B I T S

3

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
P-46	Curriculum vitae of Dolgos		12

1 THE COURT: This is the continued hearing of
2 F.H. and M.H. on behalf of J.H. v. West Morris Regional
3 High School Board of Education, docket number EDS
4 10706-2017.

5 Today is July 25th and I am Judge Betancourt.

6 Appearances for Petitioner?

7 MS. WARSHAW: Julie Warshaw, Warshaw Law Firm
8 representing the Petitioners.

9 THE COURT: Good morning.

10 MS. WARSHAW: Good morning.

11 MS. HOWLETT: Good morning, Your Honor. Jodi
12 Howlett, Cleary Giacobbe Alfieri Jacobs on behalf of
13 Respondent School District.

14 THE COURT: Good morning. We finished with
15 your last witness, correct?

16 MS. WARSHAW: Correct.

17 THE COURT: So your next witness please?

18 MS. WARSHAW: Yes. We call Melissa Dolgos
19 please.

20 THE COURT: Have a seat. How are you?

21 THE WITNESS: Good. How are you?

22 THE COURT: Would you raise your right hand?

23 M E L I S S A D O L G O S, PETITIONER'S WITNESS,

24 SWORN:

25 THE COURT: State your full name, spell your

1 last name.

2 THE WITNESS: Melissa Ellen Dolgos, D-O-L-G-
3 O-S.

4 THE COURT: Proceed.

5 DIRECT EXAMINATION BY MS. WARSHAW:

6 Q Okay. Hi Ms. Dolgos. How are you?

7 A Good. How are you?

8 Q Good. Thank you for coming today.

9 So I'm going to be asking you some questions
10 and then I just ask if you keep your voice up because
11 it -- everything is being recorded today. Okay?

12 A Okay.

13 Q If you have any questions just let us know.
14 Okay?

15 A Okay.

16 Q Can you tell us where you are employed?

17 A Immediate Care Children's Psychiatric Center.

18 Q And is that also ICCPC?

19 A Yes.

20 Q Okay. How long have you been employed there?

21 A Three years.

22 Q And could you please tell the Court what's
23 the highest degree that you hold?

24 A I have a Masters of Arts and I have my license --
25 my license associated counselor degree.

1 Q And what is your current job title?

2 A Senior clinician.

3 Q And what are your job responsibilities?

4 A My job responsibilities are to conduct family and
5 individual therapy sessions along with group family --
6 group therapy sessions. Also, you know, I am in charge
7 of trying to help the interns and provide
8 administrative or clinical advice.

9 Q And how long have you held the title that you
10 have right now?

11 A I've held that I think for about almost two years
12 now.

13 Q And what title did you hold before that?

14 A Just a regular clinician.

15 Q Are you supervised by a licensed
16 psychiatrist?

17 A Yes.

18 Q And who is that?

19 A Dr. Srinivasan.

20 THE COURT: Spell that.

21 THE WITNESS: S-R-I-N-I-V-A-S-A-N.

22 THE COURT: Thank you.

23 BY MS. WARSHAW:

24 Q And do you consult with Dr. Srinivasan on a
25 regular basis?

1 A Yes, every day.

2 Q And do you consult with Dr. Srinivasan on
3 your clients?

4 A Yes.

5 Q And when you were the counselor for J.H. did
6 you consult with Dr. Srinivasan on a regular basis
7 about J.H.?

8 A Yes.

9 Q Could you please tell the Court about where
10 you went to school?

11 A I went to Fairleigh Dickinson University for
12 graduate school and East Stroudsburg University for
13 undergraduate.

14 Q And I'm going to show you --

15 MS. WARSHAW: May I approach the witness?

16 THE COURT: Please.

17 BY MS. WARSHAW:

18 Q Okay. I'm going to give you a binder. Okay?

19 A Okay.

20 Q I want you to turn to exhibit 46.

21 THE COURT: Which binder are we --

22 MS. WARSHAW: The Plaintiff's, P-46.

23 BY MS. WARSHAW:

24 Q Do you recognize this document?

25 A Yes.

1 Q And can you tell the Court what this is?

2 A This is my curriculum vitae.

3 Q And could you briefly tell the Court your
4 employment history?

5 A So prior to Immediate Care I worked at Gen Psych
6 which is another partial hospitalization and IOP
7 program for about two years and before that I worked at
8 a residential facility for a few months when I was
9 licensed. Prior to my license I had experience as case
10 management with mentally ill clients at Easter Seals.

11 Q And ICCPC, is that a full hospitalization
12 program or a partial hospitalization program?

13 A Partial.

14 Q Your curriculum vitae says that you have
15 experience in group individual counseling for
16 adolescents. Can you just briefly describe a little
17 bit more about what you do with that?

18 A Yes. So -- the program is a day program from nine
19 a.m. to 2:30 p.m. and there's five groups a day.

20 Groups are varied on different topics such as anxiety,
21 school issues, family issues, pretty much a variety of
22 topics every day. They -- they change. They also get
23 some kind of cognitive behavior therapy and --
24 dialectal behavior therapy and art therapy. So --

25 Q And can you describe the program that J.H.

1 was involved in?

2 A Yes. She was there -- she was in after school for
3 a little bit which is a four to seven program for three
4 hours a day and then she was in the day program and
5 it's the same kind of group criteria. They don't
6 change. It just varies from three hours to five hours
7 a day. She also got individual therapy with me and
8 family therapy.

9 Q And your curriculum vitae indicates that you
10 have extensive experience working with -- in
11 therapeutic settings. Can you briefly describe a
12 little bit more about the therapeutic settings that
13 you've had experience with?

14 A Yes. The therapeutic settings are, you know, this
15 is an intensive level of care. So it's the next level
16 from inpatient hospitalization. So I've had a lot of
17 experience with that with immediate care and then Gen
18 Psych. Prior to that was a higher level of care called
19 residential. So that was really intensive therapy and
20 then prior to that was more of an outpatient therapy
21 basis. I've had experience in all of that.

22 Q Okay and your curriculum vitae indicates that
23 you were trained in dialectic behavior therapy? Can
24 you explain to the Court what that is?

25 A So yeah when I was at Gen Psych they had us do a

1 40 hour intensive training of dialectical behavior
2 therapy which are, you know, pretty intense modules for
3 people that have a lot of emotional dysregulation,
4 impulsivity, -- they need help with mindfulness and
5 they need help with a lot of family and teenage
6 dilemmas.

7 Q Are you familiar with individual education
8 programs or IEPs?

9 A Yes.

10 Q Could you briefly describe your experience
11 with IEPs?

12 A Most of the kids that come to this higher level of
13 care have an IEP through the school district.

14 Q And what is your experience working with
15 children with anxiety?

16 A I have a lot of experience with that.

17 Q Can you -- is -- is anxiety one of the
18 primary issues that you deal with at ICCPC?

19 A Yes, among -- among others yes. Anxiety is pretty
20 primary.

21 Q And what if any experience do you have
22 working with children with specific learning
23 disabilities?

24 A I have experience with that as well. We have a
25 lot of ADHD or Asperger clients that need a lot of

1 adjustment in how they're learning and adjustment in
2 the groups. So --

3 MS. WARSHAW: Your Honor, at this time I'd
4 like to enter P-46 into evidence and offer Melissa
5 Dolgos as an expert.

6 MS. HOWLETT: Your Honor, we have no -- the
7 Respondent has no objection to P-46, but I'm not sure
8 what this --

9 THE COURT: Yeah. There's no proffer --
10 she's an expert in what?

11 MS. WARSHAW: She's an expert in counseling
12 adolescents and anxiety.

13 MS. HOWLETT: Your Honor, there's been no
14 expert report presented and based upon the testimony
15 and the voir dire by the Counsel I -- I don't think
16 that they've met the burden to show that she's an
17 expert in counseling adolescents and anxiety.

18 THE COURT: I agree.

19 MS. WARSHAW: Your Honor, we have several
20 letters that said she was a treating psychologist or
21 therapist for J.H. throughout this process. We have
22 multiple letters from her that the District has
23 accepted and has used in their determinations for their
24 IEP regarding this student. I'm happy to ask her more
25 questions if you'd like regarding that, but she was a

1 treating counselor for this -- this individual.

2 THE COURT: In anxiety, specific to anxiety.
3 You didn't give me anything about anxiety her training
4 or background in it at all.

5 MS. WARSHAW: Okay. I'm --

6 THE COURT: Other than that she --

7 MS. WARSHAW: -- happy to ask more questions
8 --

9 THE COURT: -- other than that she sees lots
10 of kids with anxiety.

11 MS. WARSHAW: I'm happy to ask --

12 THE COURT: Go ahead.

13 MS. WARSHAW: -- her more questions.

14 (P-46 was received
15 in evidence.)

16 BY MS. WARSHAW:

17 Q Okay. Ms. Dolgos, can you specifically state
18 your experience dealing with adolescents and anxiety
19 with regard to any of your employments that you had?

20 A Yes. So in -- within the facilities that I've
21 worked there have been kids that come in with
22 generalized anxiety or, you know, phobia disorders,
23 agoraphobia. So through experience I've learned how to
24 manage kids with anxiety, you know, work with schools
25 and making adjustments and families making adjustments

1 to help understand the concept of anxiety and how
2 overwhelming it is.

3 Q And through your training have you had any
4 specific certifications that you've received or
5 anything regarding anxiety or depression?

6 A Just that dialectical behavior therapy which is a
7 -- component of various disorders.

8 THE COURT: What was that?

9 THE WITNESS: The dialectic behavior therapy
10 certification, the 40 hour training that I had done.
11 It didn't cover any specific disorder. It covered a
12 variety of disorders. It's primarily made for
13 borderline personality, but it incorporates with a lot
14 of other diagnoses.

15 BY MS. WARSHAW:

16 Q And how long have you been -- let's go back
17 to your experience with ICCPC. Can you describe for me
18 the number of patients that you have that you counsel
19 regarding anxiety, depression and school related
20 issues?

21 A All the kids that come to the program have school
22 related issues. They are not able to function or go to
23 school. So that's why they come to the higher level of
24 care. So, I mean, typically we have a case load of
25 about 40 to 60 kids and I would say almost all of them

1 have anxiety or depression.

2 Q And you meet with them individually for
3 counseling?

4 A Yes. Not all 40 or 60, but yes.

5 Q How many sessions do you run per week of
6 individual counseling?

7 A Two to three sessions a week.

8 Q And are they with the same students or with -
9 - do they vary?

10 A They vary.

11 Q So in a program such as yours how often does
12 a student see you for counseling?

13 A With -- on my case load which I can hold up from
14 ten to 14 clients, that -- I at least see them two to
15 three times a week. So it is the same clients. It's
16 just not just the one client. I guess I was confused
17 by your question with varying. Yeah.

18 Q Okay and when you worked for Gen Psych you
19 had the title of therapist. Is that accurate?

20 A Yes.

21 Q Okay. So in that setting your curriculum
22 vitae indicates that you provided individual therapy to
23 adolescents and adults and those with special needs.
24 Can you describe for me the therapies that you
25 conducted in -- at Gen Psych?

1 A Yes. So it was the same concept of group and
2 individual and family therapy. I had to adjust, you
3 know, the methods that I used for the clinical
4 background depending upon what the kids' needs were or
5 the adults.

6 Q And have you ever completed any in service
7 trainings?

8 A Yes.

9 Q And can you describe for me whether or not
10 they relate to training in dealing with children with
11 anxiety, depression, school related issues?

12 A Yes. I've also been to conferences related to
13 anxiety, social anxiety, school anxiety and in service
14 wise, you know, ADHD and learning disorders and anxiety
15 as well. So --

16 Q And what type of -- can you describe for me
17 approximately how many conferences you've been to and -
18 - and if you recall who ran those conferences?

19 A It was an NJCA conference. It was a New Jersey
20 conference. I can't -- it was various people running
21 it, but they -- I've been to about three of the all
22 weekend conferences.

23 Q And you also dealt with students in crisis on
24 the hotline at Gen Psych. Is that accurate?

25 A Yeah.

1 Q Can you describe for me what issues you face
2 with the hotline as well?

3 A That was more for danger to self, suicide risk,
4 self harm.

5 Q And do -- did many of those people that you
6 spoke to have issues with anxiety and depression?

7 A Yes. A lot of times it was more over thinking,
8 worrying, a lot of the underlying issues of anxiety.

9 Q And you also have experience as a New Jersey
10 mentor. Can you describe for me the therapy that you
11 provided to those adolescents and whether or not it
12 related to anxiety, depression, school related issues?

13 A Yes. That was more intensive level. That was
14 residential. So it was more -- it -- it wasn't
15 necessarily anxiety at that point, but it was more
16 behavioral issues.

17 Q And have you -- have you yourself run any in
18 service trainings for other employees or staff
19 regarding anxiety, depression or school related issues?

20 A Yeah. We had in service at ICCPC not too long ago
21 about deconstructing anxiety and -- and how to get to
22 the core root of it.

23 THE COURT: Did you run that?

24 THE WITNESS: I did not run it. I learned it
25 at the conference and then we had to reteach it to the

1 staff.

2 BY MS. WARSHAW:

3 Q So were you one of the people who retaught it
4 to the staff?

5 A Yeah, myself and -- and one of my coworkers.

6 Q And do you have any other experience with
7 degrees or conferences or in service trainings that you
8 have experience in the areas of anxiety, depression and
9 school related issues?

10 A Not that I can think of.

11 THE COURT: Have you ever testified in court
12 before as an expert?

13 THE WITNESS: No.

14 THE COURT: Have you written any articles
15 regarding anxiety that have been --

16 THE WITNESS: No.

17 THE COURT: I'm not going to qualify her as
18 an expert. You can ask her questions in her capacity
19 as a counselor at ICCPC and --

20 MS. WARSHAW: Okay.

21 THE COURT: -- give it whatever weight I deem
22 appropriate.

23 MS. WARSHAW: Okay.

24 THE COURT: And that's no disrespect meant to
25 you.

Dolgos - Direct

18

1 THE WITNESS: No. I -- yeah -- it's okay. I
2 have a lot of experience. I would not say I'm an
3 expert either.

4 BY MS. WARSHAW:

5 Q Ms. Dolgos, did you have the opportunity to
6 meet and work with my client, J.H.?

7 A Yes.

8 Q Okay. Can you tell me how long you worked
9 with J.H.?

10 A I had her from October 2016 to December 2016 and
11 then from January 2017 to June 2017.

12 THE COURT: Give me those dates again please.

13 THE WITNESS: It was October to December of
14 2016 and then it was January to June of 2017.

15 THE COURT: Thank you.

16 THE WITNESS: You're welcome.

17 BY MS. WARSHAW:

18 Q And in what capacity did you work with J.H.?

19 A I worked with her as her primary clinician. So I
20 was the person that she would go to for individual
21 therapy, crisis management. I also had her in groups a
22 couple times and I did family work with her and her
23 parents.

24 Q Okay. Can you turn to exhibit P-15?

25 A Okay.

1 Q Do you recognize this document?

2 A Yes.

3 Q And --

4 MS. HOWLETT: I think this was remarked as a
5 joint exhibit.

6 THE COURT: I --

7 MS. WARSHAW: Okay

8 THE COURT: Not to beat a dead horse, I -- I
9 don't want to be going back between the three binders
10 now.

11 MS. HOWLETT: Yeah. It was remarked as joint
12 12, Your Honor. J -- J-12.

13 THE COURT: Before we move on, we'll work --
14 we'll work that way through it. I don't want to
15 disrupt the hearing. When we're done today you're
16 going to cull what's out of your -- out of your binder
17 -- respective binders that's now a joint exhibit and
18 just you can email me or let me know so I'll pull it
19 out so it's not in and let me know if it's in evidence
20 and you can remark it as a joint exhibit. When I have
21 to go to write this up I really don't want to work out
22 of three binders with the same --

23 MS. WARSHAW: Understood, Your Honor.

24 THE COURT: Okay. So what's the number now?
25 J what?

1 MS. HOWLETT: J-12.

2 THE COURT: Thank you.

3 MS. HOWLETT: I believe is what Counsel's
4 referencing.

5 BY MS. WARSHAW:

6 Q Have you seen this document before?

7 A Yes.

8 Q Okay. Can you tell me the date of this
9 document?

10 A October 20th, 2016.

11 Q And did you sign this document?

12 A Yes.

13 Q Did you write it?

14 A Yes. I cowrote it with Dr. Srinivasan.

15 Q And can you describe for the Court what this
16 document says?

17 A It is just a letter to notify the school that J.
18 was admitted to the program and the expectation that we
19 have for her length of stay and also since she will be
20 missing school we wanted her to get the tutoring
21 services that we offered.

22 Q And this letter's addressed to who?

23 A To West Morris Central, the high school and then
24 it was attention Joe -- Joe Cusack (phonetic) because
25 he was the contact I had.

1 Q And in this letter you requested home
2 instruction for the purposes of what?

3 A Since she's missing school we have to request that
4 she gets an educational component.

5 Q Do you recall why J.H. was admitted to the
6 partial hospitalization program?

7 A Yes. She came in with severe depression and
8 anxiety.

9 Q And was that anxiety related to anything
10 specific?

11 A It was a lot of anxiety related to school.

12 Q During the time that J.H. was in the partial
13 hospitalization program did you notice any
14 improvements?

15 A Yes.

16 Q Can you describe for me what those
17 improvements were?

18 A Yeah. With -- over time with the individualized
19 attention that she received and our groups are small.
20 We have about, you know, five to six kids per group,
21 and I think that that smaller atmosphere helped her to
22 start to open up socially and engage and -- and
23 therapeutic needs that she had for group.

24 Q Okay. Can you turn to the next exhibit?

25 MS. HOWLETT: Did we admit that?

1 BY MS. WARSHAW:

2 Q It's going to be J-13. You're going to have
3 P-16 --

4 THE COURT: No, no. We're not --

5 MS. WARSHAW: -- in your binder.

6 THE COURT: -- cross-referencing.

7 MS. WARSHAW: Just for -- for the witness,
8 because that's in her binder.

9 THE COURT: Here.

10 MS. WARSHAW: That's all.

11 THE WITNESS: J-13?

12 BY MS. WARSHAW:

13 Q J-13.

14 A Okay. Okay.

15 Q Do you recognize this document?

16 A Yes.

17 Q And who signed this document?

18 A Myself and Dr. Srinivasan.

19 Q And did you --

20 THE COURT: Please describe it for us. It's
21 a letter?

22 THE WITNESS: It is a letter. Yes.

23 THE COURT: Dated?

24 THE WITNESS: To West Morris Regional High
25 School dated 12/2/2016.

1 THE COURT: 12/2/16?

2 THE WITNESS: Yes.

3 THE COURT: Thank you.

4 BY MS. WARSHAW:

5 Q And did you consult with Dr. Srinivasan in
6 writing this document?

7 A Yes.

8 Q And you both signed it?

9 A Yes.

10 Q And can you please tell the Court what this
11 document is about?

12 A It is the medical clearance for J. to return to
13 school and the transition plan.

14 Q And can you describe what the transition plan
15 would be?

16 A Half days of school in the mornings and then
17 coming to ICCPC in the afternoon. We usually start off
18 with half day transitions for kids that have the higher
19 level of care to go back to school.

20 Q And can you recall why J.H. was medically
21 cleared to return to school?

22 A As I stated before she was doing a little bit
23 better in groups, you know, and -- and she was a little
24 bit more social and we -- she was willing to try to go
25 back to school with the help and support of ICCPC.

1 Q Did you receive any response to this letter
2 from the School District?

3 A No. They just needed the letter.

4 Q Okay and can you describe for me what in
5 general you look at as far as improvement for J.H. and
6 what factors you used to determine whether or not she
7 was ready to return to school in December of 2016?

8 A With the higher risk behaviors that she came in
9 with had to have been decreased and, you know, coping
10 skills had to be in place and demonstration that she
11 was implementing them and just an improvement in mood
12 and affect and of course Dr. Srinivasan had medication
13 management which I think also helped with the mood. So
14 --

15 Q And what is your understanding as to what
16 happened to J.H. when she tried to return back to
17 school in December 2016?

18 A She went back, I think I encouraged her to try a
19 couple days. She went back two days and she just had a
20 lot of anxiety when she went back.

21 Q And --

22 MS. HOWLETT: Your Honor, is this personal
23 knowledge or is this --

24 THE COURT: I was thinking the same thing.

25 MS. WARSHAW: I was --

1 BY MS. WARSHAW:

2 Q Is -- based on what you've just testified to,
3 can you describe for me whether or not that was told to
4 you by someone or did you observe that yourself?

5 A No. I -- I observed that. I -- from her -- from
6 the notes that I've had in the past and everything she
7 went back two days.

8 Q And during those two days were you in touch
9 with J.H. at all?

10 A Yes. She was coming to program for the half days.

11 Q Okay. So did she tell you what she was
12 feeling during those two days when she went back to
13 school --

14 A Yes.

15 Q -- in December 2016?

16 A Yes.

17 Q And did you observe her in an anxious state
18 during those two days?

19 A Yes. She did come back to program quite anxious.

20 Q And can you describe for me what you did as a
21 result of her anxious state?

22 A I tried to work with her on what we could do to
23 make school, you know, help her to feel better at
24 school. I tried to contact, you know, the school
25 regarding maybe the 504 plan that we could implement

1 for her to make it more comfortable and I worked with I
2 think, you know, Mom and Dad as well on what we could
3 do as a team to help J. go to school.

4 Q And did you contact somebody at the School
5 District about the 504 plan?

6 A Yeah. Joe Cusack was my -- was my contact.

7 Q And what if anything occurred during that
8 conversation?

9 A They were willing to implement what was written on
10 the 504 plan. They were willing to try or to maybe try
11 a different program if that wouldn't work. I think
12 they were considering ESS for her.

13 Q What's ESS?

14 A Effective School Solutions.

15 Q And to your knowledge did they ever amend a
16 504 plan?

17 A I don't know. I didn't have follow up with that.

18 THE COURT: Can you describe to me what
19 Effect, because I never heard that before?

20 THE WITNESS: Effective School Solutions?

21 THE COURT: Yes please.

22 THE WITNESS: It's a specialized program
23 within the public high school that has like smaller
24 classes, more contained classes, but usually you need
25 an IEP for that which is the individualized education

1 plan which she didn't have at the time.

2 THE COURT: Thank you.

3 BY MS. WARSHAW:

4 Q And during those two days that J.H. was --
5 had a difficult time at school, what if anything was --
6 was the outcome of the counseling that you provided for
7 her?

8 A So the outcome was that, you know, she at least
9 did what -- she was willing to try to go to school
10 which, you know, was really great on her part, because
11 most of the kids, you know, if they're defiant or
12 behavioral they won't go to school, which J. was
13 willing to try. Her anxiety just overwhelmed her.

14 Q As J.H.'s counselor, did you find that her
15 behavior was willful or defiant in any way?

16 A No.

17 Q With your knowledge of J.H., do you believe
18 that J.H.'s anxiety was a conscious behavior or
19 something that was over -- that she was overwhelmed
20 with?

21 A I think she was just really overwhelmed and not
22 ready to, you know, really utilize coping skills
23 effectively at that time because the anxiety was
24 severe.

25 Q And after those two days in December of 2016,

1 do you know if J.H. went back to school?

2 A I'm sorry. What date?

3 Q After those two days in December of 2016 when
4 she tried to go back to school and was anxious, to your
5 knowledge did she go back to school after that?

6 A No.

7 Q And it was your understanding that for the --
8 in December when she was trying to go back to school
9 that she was supposed to return to school on a full
10 time basis?

11 A No. We typically do the half day transition and
12 we would contact them when she's ready to go back full
13 time.

14 Q And in -- in your December 2nd, 2016, letter
15 did you make any other recommendations to the School
16 District?

17 A Just with the 504 and accommodations that she
18 would need going back due to the anxiety, such as like
19 taking breaks or, you know, maybe trying to take tests
20 in a private room.

21 Q And at the time that you and Dr. Srinivasan
22 wrote the December 2nd, 2016, letter did you feel that
23 J.H was suffering from anxiety in any other areas of
24 her life aside from attending school?

25 A No -- just school and social peer related anxiety.

1 Q And does your -- sorry -- does your December
2 2nd, 2016, letter include any other recommendations
3 regarding her being successful at school?

4 A Just the coping skills and breaks that we
5 recommended.

6 Q Who came up with these recommendations for
7 J.H. to be successful at school?

8 A Well, I collaborate with Dr. Srinivasan on a
9 regular basis, but we have a -- a weekly team meeting.
10 So we talk about the case more in depth then and
11 together we kind of decided that's what maybe benefit
12 J., but we also have to go through, you know, sorry,
13 J.H. and her family to discuss that. So --

14 Q And was J.H. part of that discussion?

15 A Yes. After I -- I -- I collaborated with the
16 Doctor I collaborated with J.H. and the family to see
17 if they were in agreement.

18 Q To your knowledge did J.H. ever receive a 504
19 plan?

20 A I -- I don't think so.

21 THE COURT: Do you know or you don't know?

22 THE WITNESS: I don't know. She discharged
23 shortly after the December period.

24 THE COURT: Thank you.

25 BY MS. WARSHAW:

1 Q Did the School District to your knowledge
2 consult with you or Dr. Srinivasan when they -- when
3 they wrote a 504 plan?

4 A No.

5 Q Based on your knowledge of J.H., did she ever
6 have any behavior issues?

7 A No.

8 Q To your knowledge if J.H. was around others
9 with behavior issues do you think that would have
10 affected her positively or negatively?

11 A Negatively.

12 Q And why would you say that?

13 A With J.'s -- sorry -- J.H.'s anxiety the way it
14 was, she was highly affected by loud noises and -- and
15 peers that had a lot of severe issues and would be loud
16 and inappropriate in groups. So a lot of times she
17 would need to take breaks which portrayed in school
18 settings.

19 Q Okay. I'm going to show you what's been
20 marked J-14. Do you recognize this?

21 A Yes.

22 Q Can you tell the Court what this is?

23 A This is a letter dated January 6th, 2017.

24 THE COURT: January 6th?

25 THE WITNESS: Yes.

1 THE COURT: Thank you.

2 THE WITNESS: To Joe Cusack.

3 BY MS. WARSHAW:

4 Q And who signed this letter?

5 A Myself and Dr. Srinivasan.

6 Q And did you consult with Dr. Srinivasan with
7 writing this letter?

8 A Yes.

9 Q Can you describe for the Court what this
10 letter says?

11 A It's a recommendation for her to be assessed for
12 an individualized education plan, IEP.

13 Q And what was the basis for recommending that
14 she be assessed for an IEP?

15 A Because she had difficulty returning to school in
16 December and she needed I think more intensive
17 accommodations due to the severity of her anxiety.

18 Q Okay. There is a sentence in this letter.
19 Can you tell me what this means, "J.H.'s anxiety has
20 also prevented her from being able to attend a regular
21 high school as she feels judged, pressured and scared?"

22 A So as she reported in sessions there was a lot of
23 fear of the large hallways, the noises, the peers in
24 the school. She felt a lot of judgment from the peers
25 as she did not relate to them.

1 Q Do you recall why she didn't relate to the
2 peers?

3 A She has a lot of social anxiety to begin with and
4 it was difficult for her to connect with peers and it
5 was just a lot of them had a lot of -- they were loud
6 and already friendly and it just scared her to be a
7 part of that.

8 Q Can you also describe what you meant in your
9 letter when you said, "J.H. greatly improved while in
10 program. Does in fact that she is able to be in small
11 group -- small class group settings process her
12 feelings and emotions and receive more individualized
13 attention from school work."

14 A Um-hum.

15 Q Can you describe what you meant by that
16 sentence?

17 A So since the groups are small with approximately
18 five to six kids per group, if they get larger we
19 usually end up splitting the groups in our program, she
20 seemed to be more comfortable when that happened,
21 because sometimes the groups were a little bit larger
22 and she did get more anxiety when that happened and
23 then she had individualized tutoring since she was out
24 of school which she seemed to excel with.

25 Q And you indicated in this letter that she

1 greatly improved when she received more individualized
2 attention for school work. Can you describe or can you
3 give some examples as to what she excelled in when she
4 had the individualized work?

5 A She just seemed to have better grades, the anxiety
6 seemed to decrease. I can't talk about the academic
7 component itself, because I wasn't -- that's a separate
8 component from the clinical, but yeah.

9 Q Did J.H. ever report to you that that was a -
10 - a better learning environment for her?

11 A Yes. She said that it was better to have somebody
12 walk her through the steps and to be more patient with
13 her.

14 Q You indicated in your letter dated January
15 6th, 2017, that one of J.H.'s diagnosis was axis four
16 educational social support. Could you tell me what
17 that means?

18 A So that means -- like there's primary stressors
19 upon diagnosis and the primary stressor for her was
20 education which is why she was, you know, having a hard
21 time with going back to school and then social support
22 meaning that there was a lot of lack of peer support
23 that she had, a lot of social anxiety, very little
24 social support outside of the immediate family.

25 Q To your knowledge did J.H. have friends at

1 the regular high school?

2 A No.

3 MS. HOWLETT: Your Honor, again is this

4 personal knowledge or --

5 THE WITNESS: This is what --

6 MS. WARSHAW: I asked her if it was --

7 THE COURT: She was answering. Go ahead.

8 THE WITNESS: That's what J. report -- sorry

9 -- J.H. reported to me.

10 THE COURT: You could say J.

11 THE WITNESS: Okay.

12 THE COURT: Just when the transcripts get

13 done it's going to get washed out.

14 THE WITNESS: Okay.

15 THE COURT: And --

16 THE WITNESS: I'm like --

17 THE COURT: They'll put the initials in. So

18 you don't have to worry about it.

19 THE WITNESS: Okay.

20 THE COURT: All right.

21 THE WITNESS: That's what, you know, I mean I

22 did work with her on social aspects a lot. She did

23 have friends at times, but there was a lot of anxiety

24 that caused her to not maintain friendships, a lot of

25 fear of judgment, worrying, over analyzing things that

1 peers would say. So it affected her friendships.

2 BY MS. WARSHAW:

3 Q To your knowledge did J.H. have a learning
4 disability?

5 A Not to my knowledge, but there is no evidence for
6 that.

7 Q And you also indicated in your letter dated
8 January 6th, 2017, that J.H. had major depressive
9 disorder, recurrent severe without psychotic features
10 and generalized anxiety disorder. Can you describe for
11 the Court what that means?

12 A So depression would mean, you know, sadness,
13 isolation, sometimes suicidal thoughts, you know, low
14 self esteem. Without psychotic features just means
15 that she didn't have delusions or hallucinations.
16 There was no, you know, psychosis and generalized
17 anxiety is basically having anxiety on a regular basis
18 caused by various issues with peers in school and --
19 and family.

20 Q I'm going to show you what's been marked J-
21 16. Can you tell me what that is?

22 A This is dated March 15th, 2017, and it's a
23 psychiatric evaluation.

24 THE COURT: By whom?

25 THE WITNESS: By Dr. Srinivasan.

1 BY MS. WARSHAW:

2 Q Did you consult with Dr. Srinivasan regarding
3 what to include int his evaluation?

4 MS. HOWLETT: Your Honor, did she prepare
5 this evaluation? This appears to be signed by the
6 Doctor.

7 MS. WARSHAW: I'm just asking her if she --

8 THE COURT: She asked her -- I'm going to
9 allow that question. Go ahead.

10 THE WITNESS: We did -- we did talk about him
11 doing the evaluation and he took initiative on writing
12 it himself and preparing the questions and the wording
13 himself, but we did talk about him doing the
14 evaluation.

15 BY MS. WARSHAW:

16 Q Okay. Were you aware of what the evaluation
17 said regarding J.H.?

18 A He shared it with me after he wrote it.

19 THE COURT: I'm not going to allow her to
20 testify about somebody else's report.

21 MS. WARSHAW: I understand. This is already
22 -- it is a joint exhibit.

23 THE COURT: Okay.

24 MS. WARSHAW: So --

25 THE COURT: But I don't need her to interpret

1 it. If Dr. S. is going to come in, great.

2 MS. WARSHAW: Okay.

3 THE COURT: If he's not going to come in, I
4 can read it myself.

5 THE WITNESS: Okay.

6 THE COURT: Okay. And I said "Dr. S.,"
7 because I can't pronounce his name.

8 THE WITNESS: We call him Dr. S. anyway.

9 THE COURT: There you go. See that.

10 THE WITNESS: Yes.

11 BY MS. WARSHAW:

12 Q Did you ever discuss with Dr. Srinivasan an
13 appropriate educational placement for J.H.?

14 A Yes.

15 Q And can you describe for me what that
16 discussion was?

17 A Basically we -- we both agreed that it was better
18 for her to be in a smaller educational environment,
19 that would help her with her, you know, learning needs
20 and her anxiety.

21 Q Did there ever come a time when you were made
22 aware of the District's intention to place J.H. in a
23 different high school in the District in a self
24 contained behavior class?

25 A Yes. They did mention that.

1 Q And who mentioned that to you?

2 A Joe Cusack I -- I believe mentioned that. I'd
3 have to check.

4 Q And did he describe to you what that program
5 was?

6 A Yeah. That would be the Effective School Solution
7 program, the ESS program. It's a smaller component of
8 the regular high school that would have contained
9 classrooms and they have therapists there as well.

10 Q And was it your understanding that J.H. would
11 have to go to another large high school to get to that
12 program?

13 A Yes.

14 Q Was that a learning environment that you and
15 Dr. Srinivasan agreed with?

16 A No.

17 Q Can you describe why?

18 A Him and I discussed how, you know, we just
19 encouraged J. to go look -- J. to go look at it and she
20 did go look at it from the records that I remember in
21 my notes, but she -- it was still too large of a school
22 environment for her. She did better in the
23 individualized setting like in our program. So we
24 recommended something that was a little bit smaller
25 even than that program.

1 Q In general are there various underlying
2 factors that can cause anxiety?

3 A Yes.

4 Q And in general does anxiety affect people
5 differently?

6 A Yes.

7 Q Do you have an opinion as to -- based on your
8 treatment of J.H. as to the underlying cause of her
9 anxiety, if -- if you haven't already stated it?

10 A Most of her anxiety did stem from educational and
11 social support that we talked about.

12 Q Did there come a time when you were made
13 aware that the school district wanted to classify J.H.
14 as emotionally disturbed?

15 A Yes.

16 Q And did you agree with the proposed
17 classification emotionally disturbed?

18 A No.

19 Q Can you describe why?

20 A Most of the kids that have emotionally disturbed
21 as the diagnoses in the IEP are behavior, like
22 oppositional defiant kids or kids that have more severe
23 issues.

24 Q Did you ever review any of the evaluations
25 conducted by the District in support of their proposed

1 IEP?

2 A Yeah, it was shared with me after it was written.

3 Q Do you recall who shared it with you?

4 A I believe Mom gave me a copy of it.

5 Q Do you ever recall reviewing an educational
6 evaluation by the School District?

7 A The -- the IEP plan, is that what you're asking?

8 Did I --

9 Q Did you -- do you recall any educational
10 evaluation conducted by a child study team?

11 A No. Dr. Srinivasan had to do the report.

12 Q Okay. Based on your experience as a
13 therapist, can you comment as to whether or not you
14 think learning disabilities can cause anxiety for
15 students?

16 A Yes. They can. If there's difficulty focusing,
17 frustration with, you know, not understanding something
18 in -- in a classroom, but they have fear of asking for
19 help, that can all lead to anxiety.

20 Q Do you typically review IEPs for your
21 patients?

22 A Yes.

23 Q Showing what's been marked J-19. Can you
24 tell me what date this is?

25 A This is dated August 17th, 2017.

1 Q And can you describe what this document is?

2 A This is a letter, just describing to the school
3 J.'s anxiety and the effects that it has on her
4 education.

5 Q And did you write this letter?

6 A I did.

7 Q Can you describe for the Court specifically
8 what this letter says?

9 MS. HOWLETT: Your Honor, I'm going to object
10 to the witness' testimony on the basis of Your Honor's
11 order regarding the snapshot rule and the evidence
12 presented as this letter's dated after the IEP was
13 presented in April 2017. This letter is dated in
14 August 2017. Pursuant to Your Honor's order, "The
15 Petitioner shall be permitted to submit evidence dated
16 after the date of the IEP only for the purpose of
17 demonstrating that the District failed to comply with
18 the IDEA after the date of the IEP." It appears that
19 this testimony is going to be substantive as to what
20 this letter entails.

21 THE COURT: Ms. Warshaw?

22 MS. WARSHAW: Your Honor, this letter was
23 dated in August of 2017, plenty of time for the
24 District to amend the IEP. They had at least one
25 independent evaluation at that time and they failed to

1 do so. We have a right to show that they had plenty of
2 time to amend the IEP and failed -- failed to do so and
3 that that was their responsibility and their violation
4 of the IDEA, because they at the day that school
5 started there was nothing in place for this child.
6 There was no appropriate placement whatsoever and they
7 had plenty of time and knowledge to -- to do that.

8 THE COURT: I'm going to allow it. You can
9 address it on cross and when you submit -- when you
10 submit your closing statements you can address it as
11 too late.

12 MS. HOWLETT: Thank you, Your Honor.

13 THE COURT: Okay. Proceed.

14 MS. WARSHAW: Okay. Thank you.

15 BY MS. WARSHAW:

16 Q Okay. Ms. Dolgos, can you please describe
17 for the Court what this letter states?

18 A It's a description of how, you know, she -- she
19 was unable to complete most of her assignments due to
20 anxiety and confusion and it was also just describing
21 how from my -- my point of view that, you know, what
22 I've seen clinically that there was no behavioral
23 issues as the IEP stated that there were.

24 Q And is it fair to say that you again
25 requested that J.H. be provided with small classroom

1 with college bound peers?

2 A Yes.

3 Q And what if anything did you say int his
4 letter about her struggling in large group settings?

5 A It just -- it affects her anxiety more and it
6 causes more confusion for her and she just -- she --
7 she shuts down usually when she is in those larger
8 group settings.

9 Q You also indicated specifically in this
10 letter about why J.H. was unable to return to school
11 after the two days in December of 2016. Can you
12 describe for the Court what the reasoning is that you
13 put in this letter?

14 A I have to refresh my memory. I'm sorry.

15 Q Sure. Take your time.

16 THE COURT: Didn't we address that already?

17 MS. WARSHAW: It is in this letter --

18 THE COURT: No, but didn't this witness
19 address that already --

20 THE WITNESS: Yeah. It was --

21 THE COURT: -- through previous testimony why
22 -- why J. didn't go back to school?

23 MS. WARSHAW: Right, but it's also included
24 in this letter which is pertinent, because it also went
25 to the District again reiterating her concerns and

1 again they didn't do anything.

2 THE COURT: Okay. But the letter speaks for
3 itself and I'm going to read it because it's a joint
4 exhibit. So it's already in.

5 MS. WARSHAW: Okay.

6 THE WITNESS: Okay.

7 THE COURT: Ask another question please.

8 BY MS. WARSHAW:

9 Q In this letter dated August 17th, 2017, did
10 you make a recommendation regarding a school that
11 offers therapy?

12 A I made -- I - we suggested a structured but non --
13 non-strict educational environment that can help her
14 function better with more flexible schedules for her.

15 Q So did you recommend a therapeutic placement
16 or a non-therapeutic placement for J.H.?

17 A It -- we didn't specify therapy. We just said
18 smaller school.

19 Q Okay. I'm going to show you what's been
20 marked P-30 which is not to my knowledge a joint
21 exhibit.

22 THE COURT: Which books? You could just put
23 it up here.

24 BY MS. WARSHAW:

25 Q Have you ever seen this letter before?

1 A No.

2 Q Is Evelyn Kaminsky (phonetic) somebody who
3 works at ICCPC?

4 A Yes.

5 Q Okay. Thank you. Did you ever become aware
6 that J.H. was undergoing independent evaluations and
7 she was diagnosed with a specific learning disability?

8 A No.

9 THE COURT: What was the answer?

10 THE WITNESS: No.

11 MS. WARSHAW: All right. No more questions
12 at this time.

13 THE COURT: Before you start cross I want to
14 take a short break for me.

15 MS. HOWLETT: Sure, Your Honor.

16 THE COURT: Okay.

17 MS. HOWLETT: Thank you.

18 THE COURT: Five minutes.

19 (BRIEF RECESS)

20 THE COURT: Okay. We're back from the break.

21 Cross, Ms. Howlett?

22 MS. HOWLETT: Thank you, Your Honor.

23 CROSS-EXAMINATION BY MS. HOWLETT:

24 Q Good morning.

25 A Good morning.

1 Q Melissa -- can I call you Melissa?

2 A Yes.

3 Q It's just easier, right?

4 A Yes.

5 Q Okay. So I'm going to try and make this as
6 quick as possible. You testified earlier that you
7 treated or provided counseling to J. through June 2017?

8 A Um-hum.

9 Q You're not seeing her anymore?

10 A No.

11 Q And at that time do you recall what her
12 educational situation was? Was she planning on
13 attending school?

14 A No. We were -- I know that they were planning on
15 doing a different placement, but it was summertime. So
16 there wasn't really a lot of school involvement at that
17 point.

18 Q And by "they" do you mean, like, "the
19 family?"

20 A The family, yes.

21 Q In your letters, J-13, you probably don't
22 have to even flip to it.

23 A Okay.

24 Q You talked about transition -- a transition
25 plan?

1 A Um-hum.

2 Q And you said you normally recommend
3 transition planning for kids that are having school
4 anxiety-- related anxiety?

5 A Yes.

6 Q Can you describe what that looks like
7 normally?

8 A Yeah. Any kid that usually goes from school to
9 our higher level of care, we contact the schools about
10 half day transitions just to make it easier for the
11 mental health and -- and emotional aspect of the kids
12 and the schools are usually accommodating to that.

13 Q Is the goal to get kids back into school --

14 A Yes.

15 Q -- on a full time basis?

16 A Yes. It's a slow transition.

17 Q Was that initially your goal for J.?

18 A Yes.

19 Q Are you aware that the -- the IEP that the
20 District provided for J. actually provides for a half
21 day transition program?

22 A I -- I don't remember. I haven't seen the IEP in
23 a while. No.

24 Q Do you know if she had a half day transition
25 program for her current school placement?

1 A No.

2 Q No, you don't know or no, she didn't?

3 A I -- I don't believe she did. No.

4 Q You said that J. was suffering from social
5 and peer related anxiety.

6 A Um-hum.

7 Q Can you talk a little bit more about that,
8 what she reported to you?

9 A Yes. J. has always had difficulty making friends
10 in the school settings. She has a hard time just, you
11 know, contacting peers and collaborating and -- and
12 fitting in and it's the large social settings she
13 hasn't really been able to function in those when I had
14 her. She had difficulty, you know, leaving the house,
15 just the social atmosphere in general scared her.

16 Q So social atmospheres in general were an
17 issue for her?

18 A Yes.

19 Q So that's not necessarily just school. It
20 could be any sort of social situations?

21 A Correct.

22 Q And what do you usually recommend for -- in
23 your experience for individuals that are having, you
24 know, trouble with social anxiety?

25 A We usually try to have them, you know, start off

1 in like a small setting as, you know, such as ourselves
2 -- like ICCPC and then maybe transition to social
3 groups outside of school that are groups in like
4 depression or anxiety as well, things that -- they can
5 relate to when they leave our program.

6 Q You mentioned using coping skills and breaks
7 or recommending things like that for kids that are
8 suffering from especially school related anxiety. Is
9 that --

10 A Um-hum.

11 Q -- is that accurate? So what does that look
12 like, coping skills and breaks? Can you talk a little
13 bit more about that?

14 A Yes. So most of the time if -- if kids are
15 returning to school with anxiety we recommend that they
16 at least maybe can work out a plan where they can go
17 see the guidance counselor and, you know, take breaks
18 to go to the bathroom maybe like once or twice per
19 class depending upon what the school agrees to and
20 coping skills would be -- you know, that would be more
21 or less just deep breathing and -- and teachers trying
22 to help or professionals in the school that can try to
23 help with anxiety, have them come down. So --

24 Q Do you still have the joint binder in front
25 of you? Oh, I think so.

1 A Yeah.

2 Q Can you just turn to J-9? It's the IEP.

3 A Okay.

4 Q And then if you flip through on the bottom
5 it's going to be marked "WM028." See the little
6 numbers at the bottom?

7 A Yup.

8 Q Okay.

9 A Okay.

10 Q Have you -- you testified earlier I believe
11 that you reviewed the IEP. Is that --

12 A I did see it, yes, when they first got it.

13 Q At some point.

14 A Um-hum.

15 Q Can you -- this page, it's entitled
16 modifications, supports and progress reports?

17 A Um-hum.

18 Q At the -- at the top box you'll see filled
19 in, were -- were you aware that the IEP provides for
20 extended time on tests and quizzes?

21 A Yes. I believe that that was on there. Yes.

22 Q And meeting with the counselor, the school
23 counselor upon J.'s request whenever she needed to?

24 A Um-hum.

25 Q And frequent breaks?

1 A Yes.

2 Q That sounds like what you were recommending
3 as far as coping skills and breaks for school related
4 anxiety. Does that --

5 A Yeah.

6 Q -- sound accurate?

7 A Yes.

8 Q You spoke earlier about your joint letter
9 with Dr. S. I'm not even going to attempt to say it,
10 from January. That was J-14 just for reference.
11 There's a recommendation in here that -- that J. be
12 assessed and approved from an IEP.

13 A Right.

14 Q What -- what's the basis for that?

15 A We usually consider that when kids are having a
16 really hard time to go to school to make it easier for
17 them to transition to school and we collaborate with
18 the schools on that recommendation.

19 Q Are you personally familiar with the
20 Administrative Code regarding eligibility for special
21 ed.?

22 A No. Usually the schools would tell me whether or
23 not they qualify before assessing.

24 Q Right. You testified earlier that you didn't
25 agree with the classification of emotionally disturbed.

1 I think it's because you said that most kids with
2 emotionally disturbed are behavioral, they have ODD and
3 more severe issues.

4 A Um-hum.

5 Q Does that sound accurate?

6 A Yes.

7 Q So what classification did you think was
8 appropriate for J.?

9 A I was just thinking maybe more along the lines of
10 either assessing for ADHD or learning, you know, a
11 learning disability, because I know she had
12 difficulties in math, but that's all I was aware of.

13 Q How did you know she had difficulties in
14 math?

15 A That was reported with the tutoring, that she had
16 -- she --

17 Q The tutor reported to you or --

18 A Yeah. She needed more help with the math
19 component.

20 Q And ADHD, does she have an ADHD diagnosis?

21 A No. I mean, I'm not the specialist in IEPs. I
22 just didn't think that emotionally disturbed really fit
23 J. Sometimes IEPs have other health impaired or they
24 have less severe diagnoses.

25 MS. HOWLETT: Your Honor, I'm just going to

1 refer to the Code which isn't obviously in evidence,
2 but --

3 BY MS. HOWLETT:

4 Q Are you aware that the criteria for
5 emotionally disturbed includes an inability to build or
6 maintain satisfactory interpersonal relationships with
7 peers and teachers?

8 MS. WARSHAW: Objection, Your Honor, because
9 --

10 THE COURT: No. I want to hear it.

11 THE WITNESS: No.

12 BY MS. HOWLETT:

13 Q Are you aware that the criteria for
14 emotionally disturbed includes a general pervasive mood
15 of unhappiness or depression?

16 A No.

17 Q Or that the criteria includes a tendency to
18 develop physical symptoms or fears associated with
19 personal or school problems?

20 A No.

21 Q Are those the type of characteristics that
22 you would use to describe to J.?

23 A Some of them I think, yes.

24 Q An inability to build or maintain
25 satisfactory interpersonal relationships with peers and

1 teachers?

2 A Yes.

3 Q A general pervasive mood of unhappiness or
4 depression?

5 A Yes. Depression was better when she went to
6 school, but yeah, I think that would still qualify.

7 Q A tendency to develop physical symptoms or
8 fears associated with personal or school problems?

9 A Yes.

10 MS. HOWLETT: And Your Honor, for the record
11 that's N.J.A.C. 6A:14 --

12 THE COURT: I know what it is. Thank you.

13 MS. HOWLETT: Okay. I just didn't know for
14 the record purposes.

15 THE COURT: I was --

16 MS. HOWLETT: I know Your Honor knows.

17 THE COURT: -- I was going to ask her that
18 question myself.

19 MS. HOWLETT: Recording.

20 THE COURT: Thank you.

21 BY MS. HOWLETT:

22 Q You testified earlier that J. had some
23 difficulty returning to school when she tried --

24 A Um-hum.

25 Q -- in December and my notes say that you

1 testified that she needed more intensive accommodations
2 due to the severity of her anxiety. What type of
3 accommodations were you referring to?

4 A Well, this is before the IEP got implemented. So
5 I -- I would say that that's why in January we
6 recommended that.

7 Q Okay. That --

8 A Yeah.

9 Q -- was the --

10 A Um-hum.

11 Q Right. What type of accommodations in school
12 do you generally recommend for students that are
13 suffering from school related anxiety?

14 A It's -- it's pretty much the same that we --
15 that's on her IEP, the -- the breaks, individualized
16 help with guidance counselors, sometimes ability to use
17 coping skills, you know, within the classroom,
18 sometimes classrooms don't allow certain coping skills.
19 So we make accommodations.

20 Q Right.

21 A Yeah.

22 Q Have you ever been to West Morris Central
23 High School?

24 A No.

25 Q Or West Morris or Mendham High School, yeah.

1 A No.

2 Q West Morris Mendham. Have you ever observed
3 the being successful program at Mendham High School?

4 A No.

5 Q Did you contact anyone from the program at
6 any time?

7 A No.

8 Q Do you know how many students are in the
9 program?

10 A No.

11 Q Or what the characteristics of the students
12 in the program are?

13 A No.

14 Q So in this January letter you recommended a
15 therapeutic setting to continue progressing with
16 anxiety, depression and function in school.

17 A Um-hum.

18 Q Not to be redundant, but as far as
19 therapeutic setting, what -- can you describe what you
20 meant by that?

21 A Just to have access to therapeutic needs in
22 school, whether it's a counselor or extra services with
23 aids or whatever she could get.

24 Q And J-19, that was that last letter that
25 August one that was -- that you spoke about before,

1 testified to.

2 A Um-hum.

3 Q I noticed that Dr. S. didn't send this
4 letter. Is there -- but he had signed all the previous
5 letters that had gone to the -- the school.

6 A Right.

7 Q Is there a reason why he didn't sign this
8 one?

9 A He wasn't involved at that time, because I think
10 they followed up with Evelyn Kaminsky for outpatient
11 which is why she wrote the October letter. J. was
12 discharged in June, but I did follow up with her in the
13 summer at least twice a month for just regular
14 outpatient therapy and then that's -- I stopped seeing
15 them briefly after that and then I think they were
16 seeing Evelyn.

17 Q So what prompted you writing this letter in
18 August?

19 A Just to further explain the emotional component of
20 J. and the anxiety. You know, I wasn't aware of what
21 emotionally disturbed actually meant. So I just wanted
22 to clarify what my perspective was.

23 Q Did anyone ask you to write this letter?

24 A Yes. The family asked me to write it.

25 Q Did they say why?

1 A No. I --I mean, I can't remember actually. It's
2 -- almost a year ago.

3 Q That's okay. Questions I have to ask.

4 A Okay.

5 Q So just to clarify, you stopped treating her
6 in June and the family contacted you at some point
7 after that?

8 A No. We had a follow up plan for outpatient.

9 Q Okay.

10 A So in the summer the plan was for her to continue
11 with me and then during the school year find a
12 different therapist starting the next school year. So
13 she did see me in the summer prior to September.

14 Q So in your previous letters you had
15 recommended a therapeutic setting, access to a
16 counselor, everything that you had testified to
17 already. In -- in this letter you said that she's not
18 in need of therapy while in school. Can you explain
19 that?

20 A I guess because the plan was that she was going to
21 have outpatient therapy outside of school. So I
22 figured that would be enough for her after further
23 evaluation. In -- in the summer she seemed to be doing
24 better, but she also wasn't in school. So yeah.

25 Q So is that ordinary for a student with major

1 depressive disorder and school related anxiety not to
2 need any therapeutic supports in school?

3 A Not necessarily, no. I mean, it depends upon
4 where -- you know, where they're at with their ability
5 to -- to manage their anxiety and at that time she was
6 doing better. So I figured outpatient maybe would be
7 more -- you know, enough if -- since school -- there
8 was a hard time with her going to school, but as long
9 as the accommodations were in place which they were
10 from the IEP which I also think is why I recommended
11 outpatient outside of school.

12 Q So you recommend the outpatient with the
13 assumption that she would be provided with those --
14 with the -- what was the IEP?

15 A IEP, yeah.

16 Q So that -- your recommendation here for not
17 being in need of therapy while in school, that was
18 really -- that recommendation was based on the fact
19 that you believed that the IEP would be implemented?

20 A Yes. I guess -- I guess too part of me meant that
21 like not necessarily, she doesn't need a therapeutic
22 school. So I -- I think that my wording maybe could
23 have been better in this letter honestly, but just some
24 kind of -- she needed some kind of therapy outside of
25 school, but not within the school necessarily.

1 Q So when you wrote this letter you still were
2 recommending that she receive frequent breaks?

3 A Yeah. I mean, I -- I definitely think that the
4 structured but not strict educational environment can
5 help her function better. It was just in general like
6 having her to be an environment that's smaller, but I
7 didn't want to necessarily recommend therapeutic school
8 without a -- a doctor signing off on it. So yeah.

9 Q Do you think that J. needed to have access to
10 a counselor while in school?

11 A I mean, at the time it -- it probably would have
12 been helpful for her to have a counselor in school,
13 yes, and I mean, I also thought maybe she would stick
14 with me outside of school. So I wasn't really sure
15 what the transition plan would be come the school year.

16 MS. HOWLETT: Just one moment, Your Honor.
17 I'm sorry.

18 BY MS. HOWLETT:

19 Q Were you aware that the IEP couldn't be
20 implemented because the parents didn't consent to it?

21 A No.

22 Q Were you aware that the District offered J. a
23 504 plan for the 2017-'18 school year?

24 A No. I -- I -- I know I wrote the letter and I --
25 I didn't -- you know, she was discharged for a couple

1 of weeks in December and then come January I know that
2 it wasn't implemented, but I'm not sure why. So --

3 Q That was the '16-'17 school year?

4 A Right.

5 Q Are you aware that the District offered J. a
6 504 plan for the upcoming year?

7 A No.

8 Q For the '17-'18 school year?

9 A No.

10 MS. HOWLETT: Your Honor, I have no further
11 questions at this time.

12 THE COURT: Any redirect?

13 MS. WARSHAW: Yes.

14 REDIRECT EXAMINATION BY MS. WARSHAW:

15 Q Ms. Dolgos, you indicated that you were in
16 agreement with some of the modifications set forth in
17 the IEP. Were you aware of the actual placement that
18 the District wanted to put J.H. in in that IEP?

19 A I honestly do not remember what they suggested. I
20 think at the -- I think it was ESS program, but I -- I
21 can't recall for a fact.

22 Q Did any of your recommendations or Dr.
23 Srinivasan's recommendations include putting J.H. in a
24 self contained behavioral class in a large high school?

25 A No.

1 Q So you're not aware that that is the
2 placement that was proposed in the IEP?

3 MS. HOWLETT: Your Honor, this is one,
4 assuming facts that are in evidence. Counsel's
5 characterizing for her and we've already had testimony
6 about that.

7 THE COURT: Sustained.

8 MS. HOWLETT: Thank you.

9 BY MS. WARSHAW:

10 Q You had indicated that J.H. was suffering
11 from school related anxiety. Would you say that her
12 anxiety was -- or that she had generalized pervasive
13 mood or depression throughout every aspect of her life
14 or just related to school?

15 A For depression or anxiety?

16 Q Let's start with anxiety.

17 A Anxiety was mostly related to school. Some peer
18 social anxiety as I mentioned.

19 Depression was mostly a personal issue that she
20 was suffering with.

21 Q So in your letters when you indicated a
22 therapeutic setting were you referring to a therapeutic
23 out of District placement or a school environment with
24 supports?

25 A Just school environment with supports.

1 Q Were you aware that the IEP proposed by the
2 District did not address her math issues?

3 MS. HOWLETT: Your Honor, this is --
4 objection.

5 THE COURT: Remember the IEP, she already
6 said that.

7 THE WITNESS: Should I answer the question?
8 I don't know --

9 THE COURT: No.

10 THE WITNESS: Oh, okay.

11 MS. WARSHAW: Okay. Okay. That's okay.

12 BY MS. WARSHAW:

13 Q Ms. Dolgos, do you use the Administrative
14 Code definition of emotionally disturbed when you
15 determine your diagnosis of a student?

16 A No. We just use the DSM criteria for mental
17 health diagnoses.

18 MS. WARSHAW: Okay. No further questions.

19 THE COURT: Okay. You can step down.

20 THE WITNESS: Okay.

21 THE COURT: Thank you very much.

22 MS. WARSHAW: I'm going to show our next
23 witness in.

24 THE COURT: Now?

25 MS. WARSHAW: I'm getting our next witness.

1 She's having trouble parking.

2 THE WITNESS: Do you want me to --

3 THE COURT: You can just leave that there.

4 THE WITNESS: Okay. Okay.

5 THE COURT: You're free to go. Thank you.

6 THE WITNESS: All right. Thank you.

7 THE COURT: While Ms. Warshaw's doing that,
8 my secretary just handed me a note. So I'm going to go
9 find out what that note is about.

10 (Pause in recording.)

11 THE COURT: Okay. Ms. Warshaw has located
12 her witness.

13 How are you? How are you?

14 THE WITNESS: Okay.

15 THE COURT: Do me a favor and raise your
16 right hand?

17 E L L E N M. P L A T T, PETITIONER'S WITNESS,

18 SWORN:

19 THE COURT: State your name, spell your last
20 name.

21 THE WITNESS: Ellen M. Platt, P-L-A-T-T.

22 THE COURT: Thank you. Proceed.

23 DIRECT EXAMINATION BY MS. WARSHAW:

24 Q Okay. Dr. Platt, could you please state your
25 full name for the record and your job title?

1 A Ellen M for Michelle Platt, P-L-A-T-T. I'm a
2 child and adolescent psychiatrist.

3 THE COURT: Child what psychiatrist?

4 THE WITNESS: Child and adolescent.

5 THE COURT: Okay.

6 THE WITNESS: Well, also and general
7 psychiatrist.

8 MS. WARSHAW: Okay. Your Honor, although --
9 in your J-21, do you have Dr. Platt's curriculum vitae?
10 Because I didn't see --

11 THE COURT: I hope so.

12 MS. WARSHAW: -- that.

13 THE COURT: Dr. Platt, you have -- you have
14 the joint exhibit book there?

15 MS. WARSHAW: It should be a black book.

16 THE WITNESS: Yes, I do.

17 THE COURT: Could you look to see if J-21 is
18 your C.V.?

19 MS. WARSHAW: Otherwise I have it.

20 THE WITNESS: J-21 is --

21 THE COURT: Just 21. Number --

22 MS. HOWLETT: It's not included, Your Honor.
23 I can save everybody time. It's not --

24 THE COURT: Okay.

25 MS. HOWLETT: -- in J-21.

Platt - Direct

66

1 MS. WARSHAW: Okay. Then I'm going to use my
2 exhibit.

3 THE COURT: Okay.

4 BY MS. WARSHAW:

5 Q Okay. Dr. Platt --

6 THE COURT: Let's stop for a second. Are we
7 going to -- are we going to challenge her credentials?

8 MS. HOWLETT: No. We'll stipulate to --

9 THE COURT: Okay. What are you offering her
10 as?

11 MS. WARSHAW: She's an expert in --

12 THE COURT: In child and adolescent
13 psychiatrist.

14 MS. WARSHAW: Correct.

15 THE COURT: Psychiatry. Sorry.

16 MS. WARSHAW: And she's done independent --

17 THE WITNESS: Correct.

18 MS. WARSHAW: -- evaluations. So --

19 THE COURT: You're qualified.

20 THE WITNESS: Thank you.

21 THE COURT: You're welcome.

22 MS. WARSHAW: Thank you, Your Honor.

23 THE COURT: All right. J-21's her C.V. What
24 -- what's the P number?

25 MS. WARSHAW: So --

1 THE COURT: I'm sorry.

2 MS. WARSHAW: P-33.

3 THE COURT: P-33 is her C.V.

4 MS. WARSHAW: Has her -- yes.

5 THE COURT: And she's qualified as an expert
6 without objection. Okay.

7 MS. WARSHAW: Okay. Well, that saves a lot
8 of questions.

9 THE COURT: It certainly does.

10 BY MS. WARSHAW:

11 Q Okay. You were hired -- am I correct that
12 you were hired by the West Morris Regional High School
13 District to perform an independent evaluation of J.H.?

14 A Yes.

15 Q Were you ever informed by the School District
16 as to what this independent evaluation was going to be
17 used for?

18 A Well, they sent me referral information which I
19 always request prior to doing an evaluation so that I
20 understand the basic issues that have been going on
21 with any student.

22 Q And do you recall what information the
23 District sent to you regarding J.H.?

24 A I -- they sent me --

25 MS. HOWLETT: Is the witness referring -- it

1 looks like --

2 MS. WARSHAW: I can refer you --

3 MS. HOWLETT: -- she has her own file.

4 BY MS. WARSHAW:

5 Q Okay. In -- I can refer you to your report.

6 Would it be in your report?

7 A It should be. Yes.

8 Q Okay. So let's go to the black binder, J-21.

9 That should be your report.

10 A Yes, it is.

11 Q Okay. Can you -- just for the record can you
12 state the date of that report?

13 A The date of the consultation was September 6th,
14 2017.

15 MS. HOWLETT: And Your Honor, for the record
16 I just want to maintain my objection the date of this
17 report is after the IEP was --

18 THE COURT: Understood.

19 BY MS. WARSHAW:

20 Q So you were going to state the documents that
21 were sent to you by the School District prior to you
22 writing your report. Can you state those for the
23 record?

24 A Well, yes, actually they're listed in my report.
25 The documents that I received included a social history

1 by the school social worker, Ms. Goldberg (phonetic),
2 that was dated 1/18/17, a psychological evaluation by
3 the school psychologist Sherry Wilk (phonetic) dated
4 1/19/17, a psychiatric evaluation by Dr. Shankar
5 (phonetic) Srinivasan dated 3/15/17, an IEP dated April
6 6, 2017, a letter from Melissa Dolgos, licensed
7 associate counselor and senior clinician dated 8/17/17,
8 psycho-educational report by Natalie Shuberth
9 (phonetic), Psy.D., BCBAD, dated 8/21/17.

10 Q Did the School District provide you with any
11 educational testing that the School District did?

12 A If they had -- it would have been listed in these
13 documents.

14 Q Okay. Great. So based on the information
15 that you were provided do you feel that your
16 independent evaluation report is a fair and accurate
17 representation of what was going on with J.H.?

18 A Yes, I do.

19 Q And is it fair to say that your findings and
20 conclusions are based on a reasonable degree of medical
21 certainty with your expertise as a psychiatrist?

22 A Yes.

23 Q I'm going to refer you to page ten of your
24 report. In the third paragraph, you refer to J.H. as
25 being extremely fearful of entering school buildings,

1 appearing phobic and she describes becoming weak and
2 unable to proceed -- proceed upon approaching the
3 school. Can you tell the Court what those are symptoms
4 of?

5 A Wait just one second. Exactly where -- oh, I see
6 it. Okay. Okay. Well, they could be symptoms of a
7 number of different disorders. They could be symptoms
8 of a generalized anxiety disorder. They could be
9 related to a depressive disorder. They could also be
10 related to a developmental disorder.

11 Q Can you describe for the Court what the
12 substance of your report says regarding J.H., what your
13 findings were?

14 A Well, I think that I found her to be relatively
15 non-functional at the time that I saw her. She had
16 severe anxiety. She had irrational fears. She felt
17 socially excluded. She had been at a treatment center,
18 intensive outpatient treatment center, ICCPC, for some
19 time and she also presented with features of depression
20 and related anxiety. So her overall presentation was
21 that she was highly symptomatic and honestly I would
22 say at best marginally functional.

23 Q And what did you attribute the underlying
24 reasons for being in this dysfunctional state? Was it
25 related to anything in particular?

1 A It was related to her neuro-behavioral structure
2 which was manifested in a very aggressive way when she
3 attended school.

4 Q On page 11 of your report, the first
5 paragraph, can you describe for the Court what you
6 meant by that as well, where it begins with, "She
7 remains exceedingly emotionally fragile?"

8 A That --

9 Q The first four lines of page 11.

10 A That's not the first four lines on this page 11.

11 Q Oh, okay. Then it's different. I have page
12 12 of 15, on the bottom.

13 A This page 12 is --

14 Q Okay. If you go back --

15 A The reason -- the reason is that this was a draft
16 which I sent prior to sending the final report, but I
17 typically send a draft to the District. So the staff
18 will have a sense of my general overview.

19 Q Okay. So I'm looking at the final draft
20 which is what I had in P -- in my exhibits. So why
21 don't we refer to the final draft? Because that was
22 the final report, correct?

23 A Yeah. Yes.

24 Q Okay. Was there any changes in your draft
25 report after you showed it to the District and your

1 final report?

2 A I would honestly have to go over it line by line,
3 but typically the changes are grammar, spelling, tense
4 and things of that nature. There are occasions when I
5 may add information that I received after the initial
6 information or sometimes I will re-review the case and
7 alter -- want to add something to my determination.

8 Q Okay. Do you recall if you reviewed the case
9 again after you sent your draft to the District and
10 added or changed anything in your report?

11 A I -- I keep a lot of -- of those things. So if
12 you just hang on I will --

13 MS. HOWLETT: Your Honor, I believe the
14 witness is referring to her own personal notes that are
15 --

16 THE WITNESS: It is personal notes. Yes.

17 MS. HOWLETT: Right. I just want to bring
18 that to the Court's attention. We don't have -- I
19 don't know what she's --

20 THE COURT: I don't know either. You're not
21 going to be referring to them, because she doesn't have
22 them.

23 THE WITNESS: Okay. That's fine.

24 MS. WARSHAW: I don't have them either. So -
25 -

1 THE COURT: Yeah. We don't have them either.

2 MS. WARSHAW: Okay. Did --

3 THE COURT: All right. I'm just going to

4 stop for a second.

5 The draft is what number?

6 MS. WARSHAW: Well, I haven't seen -- I

7 haven't seen the joint exhibit book. I didn't get a

8 copy of it. So I sent -- I sent the list of what the

9 exhibit should be to Ms. Howlett. She did the -- the

10 book.

11 THE COURT: She did the book.

12 MS. WARSHAW: I didn't see the book. So what

13 I'm saying for my joint exhibit was supposed to be the

14 final copy of the report, because --

15 THE COURT: Okay.

16 MS. WARSHAW: -- that's what I have.

17 THE COURT: Stop for a second.

18 Doctor, in the exhibit book, the report

19 you're looking at is your draft report?

20 THE WITNESS: Correct.

21 THE COURT: Okay and that's the joint exhibit

22 book?

23 THE WITNESS: That is --

24 MS. WARSHAW: Yes.

25 THE WITNESS: -- this book. Yes.

1 MS. WARSHAW: I have is the final copy which
2 is what I have been referring to in -- in the -- in the
3 Petitioner's exhibit. So if I could refer to --

4 THE COURT: Let's get a final copy.

5 MS. WARSHAW: -- refer to that?

6 THE COURT: Yeah and that's P what?

7 MS. WARSHAW: That is -- that's P-33. It
8 includes --

9 THE COURT: P-33 is the final copy?

10 MS. WARSHAW: Final copy and her curriculum
11 vitae.

12 THE COURT: C.V. and what number is in the
13 joint book? What --

14 MS. WARSHAW: That is J-21.

15 THE COURT: J-21 is the Doctor's draft copy.
16 Counselors? We're going to eliminate the draft copy
17 from -- at P-21 and go with the -- with the final copy?
18 Does that make the most sense?

19 MS. WARSHAW: Yes.

20 MS. HOWLETT: Yes, Your Honor. P-33 in place
21 of J --

22 THE COURT: P-33 --

23 MS. HOWLETT: -- 21.

24 THE COURT: -- in place of J-21, correct?

25 MS. WARSHAW: Yes.

1 MS. HOWLETT: Correct, Your Honor.

2 THE COURT: All right. So J-21 --

3 THE WITNESS: So now I --

4 THE COURT: -- is not going to be in
5 evidence.

6 THE WITNESS: So where -- P-33 --

7 MS. WARSHAW: So in the --

8 THE WITNESS: -- would be in the other book?

9 MS. WARSHAW: In the blue book.

10 THE COURT: In the other book. If you need
11 some room, Doctor, you can just put some of the stuff
12 up here out of the way. Let me get this out of the
13 way.

14 THE WITNESS: Well, since we're not going to
15 use this --

16 THE COURT: Well, you -- you may eventually,
17 but you can leave it there for now.

18 THE WITNESS: Okay.

19 THE COURT: Okay. Okay. We're just on the
20 same page.

21 MS. WARSHAW: And so --

22 THE COURT: So that's page 11.

23 MS. WARSHAW: Just to be clear, yes, P-33 is
24 now in evidence?

25 THE COURT: P-33 is in because it was -- was

1 going to be a joint exhibit.

2 MS. WARSHAW: Yes.

3 THE COURT: So it's in and J-21 is going to
4 be excluded because of it's only the draft.

5 MS. WARSHAW: Yes, Your Honor.

6 THE COURT: Okay. Good. Let's get back to
7 the questions.

8 BY MS. WARSHAW:

9 Q Okay. So on the first four lines of page 11
10 on your final -- final report, can you describe for the
11 Court what you meant by this statement?

12 A Are you referring to the statement, "She remains
13 exceedingly emotionally fragile" --

14 Q Yes.

15 A -- "and the probability of her attending school is
16 extremely low at this time." Well, to expand upon
17 that, when I saw J. she was as I said before marginally
18 functional. She was very depressed. She manifested
19 her depression interpersonally and behaviorally and her
20 energy level was low. So the probability of her being
21 able to act -- go to school, et cetera, was limited.
22 She also indicated fearfulness and what I would -- what
23 I refer to in the report is a hint of inappropriateness
24 which references a kind of a disconnection to what the
25 events and people going on -- people around her and the

1 events going on around her.

2 Q You mentioned behavioral. Did you -- what is
3 the basis of that? Were there any disciplinary actions
4 or anything that you are referencing or --

5 A No. Her behavior which had become exceedingly
6 withdrawn.

7 Q And you refer to a disconnect to the events
8 and people. Is that related to her extreme anxiety?

9 A That's on page nine, which paragraph?

10 Q Are you referring to a specific paragraph on
11 page nine?

12 A No. I -- I want to know where you're --

13 Q Oh, you had just mentioned that you found a
14 disconnect to events and people and I'm asking you if
15 that is related to her extreme anxiety?

16 A Oh, yes.

17 Q Okay.

18 A Yes.

19 Q And going back to the first four lines of
20 page 11, where you indicated, "She requires an academic
21 environment with the capability of a great deal of
22 emotional awareness and intervention." Were you
23 referring to like an out of District therapeutic
24 setting or some supports within a school?

25 A I was referring to an alternative setting.

1 Q Okay. And in your professional opinion could
2 you describe for me what type of learning environment
3 would have been appropriate for J.H.?

4 A She required an environment where -- where she
5 would be shielded or protected from the provocations,
6 the standard interactions of standard peers that would
7 be found in a typical high school. She needed a -- she
8 needed to be separated from that. She needed a place
9 where she believed that her emotional reactivity could
10 be understood.

11 Q On page 11 at the end, the last paragraph,
12 you refer to DSM five criteria that J.H. met.

13 A Um-hum.

14 Q Could you review what those mean for the
15 Court?

16 A Well, these are diagnoses and DSM is a new
17 diagnostic -- relatively new diagnostic manual that is
18 a little bit more detailed and specific than prior
19 manuals.

20 Do you want me to go through each diagnosis?

21 Q If you could and -- and just highlight for
22 the Court what you meant by these, what your findings
23 were?

24 A She had a history of major depressive disorder
25 which was documented in the information from ICCPC and

1 Dr. Srinivasan also noted "with irrational thinking."
2 My mental status examination of her -- let me just turn
3 to that -- did include what I call an empty depressed
4 mood and truncated responses, a posture which indicated
5 that she was distant and separate from -- or wanted to
6 be distant and separate from me at that time, but I
7 would assume that that was regarding everybody that she
8 encountered.

9 She moved very slowly. That's what psycho-motor
10 retardation references and she spoke slowly in a
11 monotone voice and those are frequently symptoms of
12 depression.

13 Q You noted that she had a DSM five -- she met
14 the criteria for specific learning disorder with
15 impairment in mathematics, specifically with fluent
16 calculations moderate. Is that something that you also
17 found?

18 A I did not assess for that. That was part of the
19 history.

20 Q Okay. You recommended a central auditory
21 processing disorder evaluation. Can you tell me the
22 basis of that?

23 A Let me reference that.

24 Q That's the last --

25 A I know where that is.

1 Q Okay.

2 A I just want to find my -- the details that led me
3 to that.

4 Q It's mentioned in the -- the middle small
5 paragraph on page 11 of your report.

6 A Yes. I know that, but I'm -- I -- I want to -- I
7 want to find the specific details, that is the clinical
8 details.

9 The history indicated that a central auditory
10 processing dysfunction which I am not an expert in, but
11 which in a sort of -- colloquial way means that a
12 person can literally hear what you're saying, but their
13 brain does not process the words. So that they don't
14 actually understand it and then when they follow
15 through with behavior, their behavior may not be
16 connected to what you asked or what you said.

17 Q In the DSM five criteria it says on the -- I
18 guess the second line in that paragraph on page 11, the
19 last paragraph, it says in parentheses "with irrational
20 thinking." Can you describe what is meant by
21 "irrational thinking?"

22 A Okay. When I interviewed her she explained that
23 at times she would try to talk to herself to drown out
24 noise and the noise was internal noise and I would
25 consider that to be an example of irrational thinking.

1 Q Could anxiety cause someone to have
2 irrational thinking?

3 A Yes.

4 Q Do you believe that anxiety was the basis for
5 J.H. having this irrational thinking?

6 A Yes.

7 Q In your professional opinion in general,
8 could a person think rationally in one situation and
9 then in another situation if they're under high anxiety
10 think irrationally?

11 A Yes.

12 Q Are irrational fears or phobias considered
13 behaviors?

14 A They are behaviors. They're based on obviously
15 feelings that a person has.

16 Q Are they willful or intentional behaviors?

17 A No.

18 Q On page 13, you list -- actually 13 and 134,
19 you list 14 recommendations for J.H. and in section two
20 --

21 A You mean recommendation two?

22 Q Recommendation two. You indicated that you -
23 - that J.H. would benefit from academic environment
24 that was structured, monitored and designed to
25 accommodate her academic needs and provide emotional

1 support and therapeutic input. Could you describe for
2 me what was the basis of this and what you envisioned
3 would be an appropriate placement for her?

4 A The basis was that she was unable to attend school
5 because of a build up of emotional distress and so when
6 she would return to school her school would have to
7 provide enough of a comfort level so that she would
8 experience emotional support from the staff and that
9 she would not be provoked by aspects of the environment
10 and therapeutic input meaning supportive input,
11 typically with a staff member that had some education
12 in mental health, mental health processes and in
13 school.

14 Q And also on page 13 you indicated that if
15 these recommendations were not implemented that there
16 would be no change in her anxiety towards school. Do
17 you -- can you describe that recommendation a little
18 bit more thoroughly for the Court?

19 A Is that in number two?

20 Q I believe it is. Yes.

21 A Okay. Oh, right, "Without these issues being
22 addressed the manner in which J. deals with school is
23 not likely to change." She was unable to function in
24 her current academic environment and in order to enable
25 her to function her school setting had to provide

1 enough of a comfort level, reduced stimulation,
2 communicate specific support for her and that would in
3 the school setting contribute to her ability to
4 stabilize internally and then inter personally.

5 Q You indicated that she needed a learning
6 environment with reduced stimulation. Can you describe
7 what you mean by that?

8 A I mean a learning environment with a modest number
9 of students, a -- I'll use the word small, but a small
10 building that is not overwhelming to navigate and
11 measured input by the staff. So for example, in a
12 standard educational placement if a student is walking
13 down the hall and doing something that a teacher thinks
14 is untoward, the teacher may respond in any way at all,
15 maybe in a sensitive matter, maybe in a direct matter
16 or maybe in an insensitive matter -- manner, but she
17 really needed to be in a place where there was never
18 any question that the staff would respond to her in a
19 sensitive manner.

20 Q Were you aware that the School District
21 wanted to put J.H. in a self contained behavioral class
22 in a large high school?

23 MS. HOWLETT: Your Honor, I'm objecting
24 again, same basis as before.

25 THE COURT: I agree.

1 BY MS. WARSHAW:

2 Q Were you aware that the District wanted to
3 put her in a self contained classroom in a high school?

4 MS. HOWLETT: This is leading, Your Honor.

5 THE COURT: It is also, but that's -- the
6 questions on both sides have been leading up to this
7 point.

8 MS. HOWLETT: Well, I'm on cross, Your Honor.

9 THE COURT: On direct before. Apparently it
10 doesn't apply in EDS settings.

11 Restate the question.

12 BY MS. WARSHAW:

13 Q Okay. Were you aware of the type of learning
14 environment that the School District wanted to place
15 J.H.?

16 A No.

17 Q Would in your professional opinion a self
18 contained class in a large high school be appropriate
19 for J.H.?

20 A No.

21 Q Can you explain why?

22 A Well, first of all, a student has to arrive at
23 school and if it's a large public high school that
24 usually means a school bus that's unsupervised and
25 unmonitored, which would be a problem.

1 It would mean entering a school with many other
2 students that are in all sorts of communication with
3 each other and activity. That would be a problem for
4 her.

5 It would mean when she's navigating the hallways
6 that there would be unstructured, unanticipated
7 responses from other students that may or may not have
8 something to do with her, but that would be
9 overwhelming to her.

10 It also might mean that another staff member might
11 see her appearing to daydream or something of that
12 nature and intervene in a non-therapeutic manner.
13 Situations such as that.

14 Q Are you familiar with the classification of
15 emotionally disturbed in the education setting?

16 A I am familiar with the term. I am not familiar
17 with the actual details as they're written in the
18 manual.

19 Q Are you familiar enough with IEPs and the
20 definition of emotionally disturbed to formulate an
21 opinion as to whether or not J.H. could be classified
22 as emotionally disturbed? Would that be appropriate?

23 THE COURT: Sustained.

24 MS. HOWLETT: Objection.

25 THE WITNESS: Well --

1 THE COURT: She just -- don't answer. When I
2 say --

3 THE WITNESS: Sorry.

4 THE COURT: No, no. It's okay. Nobody
5 explained the rules to you.

6 If one of -- one of the attorneys objects to
7 a question you just don't answer it and then I'll make
8 -- I'll make a ruling. If I say "sustained" you're not
9 answering it.

10 THE WITNESS: Okay.

11 THE COURT: If I say "overruled," you're
12 answering it.

13 THE WITNESS: Okay.

14 THE COURT: Okay? All right. Right now it's
15 sustained.

16 She just said she wasn't familiar with the
17 E.D. classification.

18 MS. WARSHAW: She --

19 THE COURT: She wasn't. So how are you --

20 MS. WARSHAW: She said she was --

21 THE COURT: -- going to -- how is she going
22 to answer that question?

23 MS. WARSHAW: Because she said she was
24 familiar with the -- the definition of it, but --

25 THE COURT: No, she said --

1 MS. WARSHAW: -- not the classification.

2 THE COURT: Well, that's what we're talking
3 about. The classification in the Code for -- for
4 emotionally disturbed in terms of an IEP is one thing
5 and the clinical classification -- since she doesn't
6 know what the Code says in terms of definition I'm not
7 going to let you ask her the question.

8 BY MS. WARSHAW:

9 Q In your expert opinion, was J.H.'s
10 sensitivity to noise a cause of her anxiety?

11 A Yes.

12 Q In your professional opinion was J.H.'s
13 specific learning disability a cause of her anxiety?

14 A Yes.

15 Q Are you familiar with the Pernell (phonetic)
16 School?

17 A I only know the name.

18 Q When dealing with a student with anxiety is
19 it fair to say that if you change the anxiety provoking
20 situation that the anxiety could get better?

21 A Yes.

22 Q Was it your expectation that your report
23 would be used to help determine an appropriate
24 placement for J.H.?

25 A I thought that it would be included in other

1 material that the child study team had.

2 MS. WARSHAW: No questions.

3 THE WITNESS: Okay.

4 THE COURT: Cross?

5 MS. HOWLETT: Yes, Your Honor. Thank you.

6 CROSS-EXAMINATION BY MS. HOWLETT:

7 Q Good morning, Dr. Platt. How are you?

8 A Hi.

9 Q Still morning for a little bit longer.

10 You testified earlier about -- in describing
11 your report that J. was marginally functional. I think
12 that's the term you used. You saw her in September.
13 She wasn't at -- in school at that time and she hadn't
14 attended school since December which you acknowledge in
15 your report. So what do you think the basis of her --
16 the issues with her functionality were in September?

17 A In September?

18 Q When you saw her.

19 A Okay. I -- I thought that she had not at that
20 point had sufficient treatment to get on a better
21 emotional track.

22 Q When you say "sufficient treatment" can you
23 describe what you were thinking?

24 A I think she was at ICCPC at that time and it
25 appeared as if she needed additional therapy and she

1 also needed to gain a perspective about her
2 expectations of what was possible academically.

3 Q On -- and I apologize if the page numbers are
4 a little bit different, it was what you were looking at
5 before. It's my page 11. It's after that part that
6 Counsel asked you about with the emotionally fragile,
7 that line. It might be 11 or 12 on your copy. I don't
8 have that one.

9 A I'm not finding it quickly, but -- oh, it's at the
10 top of page 11.

11 Q Okay. Can you just hold that page open for a
12 little bit? In that next paragraph, I -- my copy says,
13 "Mother indicates."

14 A That's correct.

15 Q Okay. Can you talk about what you were
16 describing in this paragraph that Mom was reporting to
17 you?

18 A So -- well, I urged Mom to convey the -- well, the
19 description of J.'s impulsive and erratic anger to the
20 therapist and so that they could add that to what they
21 already knew about her irrational fears, to be sure
22 that they had -- the therapist had all of the
23 information or additional information about her
24 clinical condition at the time.

25 Q So it says in here that Mom was reporting

1 that she was having irrational fears and pervasive mood
2 disturbances and avoidant behaviors even when not under
3 stress.

4 A Could you just tell me where?

5 Q Oh, yeah, I'm sorry. It's in that paragraph.

6 A Okay.

7 Q Like halfway -- maybe three-quarters of the
8 way down.

9 A Okay. I have it. Yes.

10 Q So is it safe to say that -- or fair to say
11 that J. was exhibiting -- or under some stressors that
12 weren't related to school?

13 A She might have been.

14 Q And she was -- it was reported to you -- was
15 it reported to you that she was exhibit irrational
16 fears and anxiety even though she hadn't been in school
17 for several months at that point when you saw her, at
18 least nine months?

19 A I think so. Yes.

20 Q So the effect that you described before and
21 the way that she presented, that was even in the
22 absence of attending school?

23 A Right.

24 Q Would you be surprised to learn that only a
25 couple days after you met with her that she attended

1 school full time?

2 MS. WARSHAW: Objection to the --

3 THE WITNESS: I --

4 MS. WARSHAW: -- couple days reference.

5 THE COURT: Couple of days.

6 MS. HOWLETT: August 11th, I believe -- I'm
7 sorry -- September 11th. I don't know the exact date
8 that --

9 THE COURT: Within a week?

10 MS. HOWLETT: Within a week.

11 THE COURT: Within a week.

12 THE WITNESS: I wouldn't necessarily be
13 surprised depending upon what the specific arrangements
14 were for her.

15 BY MS. HOWLETT:

16 Q Would you be surprised to learn that she
17 attended school -- a non-therapeutic school
18 environment?

19 A Well, I'd want to know for how long and what the
20 circumstances were. In other words, I can't answer
21 that yes or no question.

22 Q That's fair. When you used the term
23 "behavior" before, I assume you're using it in a -- a
24 clinical type of way, we aren't clinicians. So we
25 typically think about behavior maybe I a different

1 manner. Can you just describe when you use the word
2 "behavior" what that might refer to?

3 A Okay. So behavior that she displayed when I saw
4 her included a lot of anxiety and the way that I
5 described it was she projected tension, sat with her
6 arms tightly crossed, indicated posture that was ill at
7 ease, but part of the tension is what's known as
8 psycho-motor retardation which is pretty classical -- a
9 pretty classical symptom of depression. So could you
10 just ask the question again, because I can -- I'm gong
11 to give -- I can give you more mental status
12 information, but I want to make sure I'm answering your
13 question.

14 Q Yeah. No. Thank you, Dr. Platt. We're
15 really just trying to get to the sense of when you use
16 the term "behavior." You're not necessarily referring
17 to what -- what the common sense of aggressive or
18 erratic, behavior -- do you use behavior to describe a
19 bunch of different types of --

20 A You're correct and my use of the term in regard to
21 her was immediate interaction, immediate response to
22 the environment that she was in.

23 Q Did -- in your assessment of J. did you
24 observe or find that she had an inability to build or
25 maintain inter personal relationships with her peers?

1 A Well, I never saw her with her peers. So I
2 couldn't say by direct observation, but I certainly
3 thought that based on what I knew about her.

4 Q Based upon what was reported to you?

5 A Yeah, and also based upon her presentation in the
6 interview which would suggest that there was some
7 limitation in her peer relationships.

8 Q Did she present with a pervasive mood of
9 unhappiness or depression to your recollection?

10 A Pardon?

11 Q To your recollection.

12 A She did. Yes.

13 Q And did -- did in your observation did -- or
14 review of her the information that was provided to you,
15 did she present with fears associated with school or
16 being around other people?

17 A Well, she looked fearful when she was with me. So
18 I considered that to be significant. She -- some of
19 the self harming behaviors that she had did relate to
20 school as for example she said she hated school since
21 sixth grade, she couldn't relate to the kids, but she
22 also said everybody hated school, but I did extrapolate
23 from her comment that her feelings and behaviors were,
24 yes, related to school.

25 Q You testified earlier that you were not -- or

1 you're not familiar necessarily with the specific
2 definition of emotionally disturbed under the
3 Administrative Code. Are you aware that the
4 Administrative Code and the DSM do not necessarily have
5 the same criteria?

6 A I -- if I thought about it I would be aware, yes.

7 Q Have you ever been to Mendham High School?

8 A No.

9 Q Have you ever observed the Being Successful
10 program at Mendham High School?

11 A The what program?

12 Q The Being Successful program?

13 A Oh, no.

14 Q The BSP.

15 A No.

16 Q When you made your recommendations, we talked
17 about those earlier, Counsel had --

18 A Um-hum.

19 Q -- asked you about those 14 recommendations,
20 do you think that J. would have benefitted from having
21 access to a counselor throughout the school day?

22 A She could.

23 Q What about a transition program where she
24 slowly went from a half a day or portions of a day into
25 maybe -- with the goal of getting into a full day at

1 school?

2 A Well, that by itself is theoretically possible,
3 but that does not include other exposures within the
4 building that could affect her, unmonitored,
5 unanticipated types of interactions.

6 Q So a program that limited those types of
7 interactions, would that be beneficial to J.?

8 A Well, they pretty much have to be absent, not just
9 limited. She was very fragile at the time and any
10 interaction was really very risky.

11 Q So when you say -- you commented before about
12 maybe a traditional high school or -- or a big space
13 versus a small space, I think you even commented on the
14 word "small," in your opinion what -- what do you
15 consider to be a small environment? You talked about a
16 lot of kids coming to school at the same time and J.
17 having to interact with them and so what -- what in
18 your vision or expertise would you consider to be a
19 small environment?

20 A Well, small meaning a building that is not -- I
21 don't know what Mendham High School looks like, but I
22 have been in a number of high schools and typically
23 they're three or four stories and many rooms on each
24 floor, et cetera. So my image of a place where she
25 would be comfortable would be a setting much smaller

1 than that with a -- with things like entrances and
2 exits that are monitored and controlled with options in
3 terms of where kids could have lunch and interact with
4 others and where there is some control to the noise
5 level and where there is immediate access to support
6 staff and yes, a -- a daily counselor.

7 Q So some therapeutic supports at school?

8 A I would say some therapeutic support in the
9 context of a -- of an atmosphere that she experienced
10 as therapeutic.

11 Q Can you just explain what you mean by that?

12 A In the context of an atmosphere where she would
13 not be overwhelmed by number of people, by size, by
14 having -- thinking that she might have to navigate a
15 long distance between this location that she would have
16 to go to and that location that she would have to go to
17 and where she had immediate access or fairly immediate
18 access to support staff.

19 Q And by "support staff" you mean -- can you
20 describe what you mean by that?

21 A Support staff meaning special education teachers,
22 counselors, therapists, psychologists, I guess staff of
23 that nature, perhaps -- perhaps an educational
24 specialist, but that is kind of out of my territory,
25 but in thinking about the totality of things that she

1 would need I would mention that.

2 Q And besides this report and this -- you've
3 met with J. once. Is that correct? And have you met
4 with her since then?

5 A I have not.

6 Q Or before this report did you meet with her?

7 A No.

8 Q Or her family?

9 A No.

10 MS. HOWLETT: Thank you, Your Honor. I have
11 no further questions.

12 THE COURT: Any redirect?

13 MS. WARSHAW: Sure.

14 REDIRECT EXAMINATION BY MS. WARSHAW:

15 Q You had indicated that the additional
16 information that Counsel was talking about that the
17 mother -- that you noted the mother shared in your
18 report, does that assist with determining what would be
19 an appropriate educational placement for a child?

20 A Can you reference the --

21 Q Oh, sure.

22 A -- exact --

23 Q It's on my page 11 or it's that paragraph
24 that said, "Mother indicates."

25 A Okay.

1 Q You had -- you had specified that that was
2 additional information to give to the therapist that
3 would help in the treatment of J.H. Is -- is that a
4 fair characterization?

5 A Yes, it is.

6 Q Okay. So would that information be helpful
7 to the School District to determine an appropriate
8 placement for J.H.?

9 A Perhaps.

10 Q And even if J.H. suffered from extreme
11 anxiety and it's pervasive depression, even if that, is
12 it in -- in your opinion would it be appropriate just
13 to address that aspect of a child or all of her needs
14 in a learning environment?

15 A I'm not sure that I completely understand the
16 question, but her emotional issues were so pervasive
17 that -- that the totality of her had to be understood
18 and addressed.

19 Q So would you have expected the -- the School
20 District to determine a placement based on her
21 emotional needs as well as her academic needs of having
22 a disability?

23 A Well, I would say primarily her emotional needs,
24 but I mean, at some point her academic needs would have
25 to be included.

1 Q So if I -- if I told you that in her current
2 placement she has special education teachers, access to
3 counselor --

4 MS. HOWLETT: Your Honor, these are all facts
5 that aren't in evidence.

6 THE COURT: Very true.

7 MS. WARSHAW: I'm just asking if that would
8 be appropriate in her -- would that fit within her
9 definition of what would be appropriate for her?

10 MS. HOWLETT: It sounds like the BSP, Your
11 Honor.

12 THE COURT: Sounds like. You know what?
13 I'll allow it. Go ahead.

14 MS. WARSHAW: Thank you.

15 THE COURT: You can answer the question,
16 Doctor.

17 THE WITNESS: Could you ask the question
18 again?

19 BY MS. WARSHAW:

20 Q Sure. If -- if I told you that J.H. was in a
21 learning environment right now where she had access to
22 a counselor and weekly sessions, she had special
23 education teachers, small classes and a -- a -- a
24 psychologist that came a few times a week, would that
25 fit into the definition of what you believe would be

1 appropriate --

2 A It would.

3 Q -- environment for her?

4 A It would.

5 Q And if I told you that she only had five or
6 six kids in -- in her class and she had her own dorm
7 room to go to in between classes to, you know, do her
8 homework or just to get away, would that fit into
9 something like the learning environment that you are
10 describing?

11 A Yes.

12 Q So if -- if I told you that J. -- when J.H.
13 arrives to school she checks in with the nurse -- well,
14 before school starts as well as in health center as
15 well as at the end of the day, would that also be
16 within your definition of what would be appropriate for
17 J.H. for a learning environment?

18 A Well, I actually think it's mandatory. So yes.

19 MS. WARSHAW: No further questions. Thank
20 you.

21 THE COURT: Do you have any --

22 MS. HOWLETT: I have no --

23 THE COURT: -- any --

24 MS. HOWLETT: -- questions, Your Honor.

25 THE COURT: Thank you, Doctor. You're

1 excused.

2 THE WITNESS: Can I just leave this here?

3 MS. WARSHAW: Yes.

4 THE COURT: Yes.

5 MS. WARSHAW: Thank you very much.

6 THE COURT: Do you have another witness?

7 MS. WARSHAW: I have one more witness, yes,
8 Your Honor. The fourth one is going to come in August.
9 She couldn't make it suddenly. So --

10 THE COURT: Okay.

11 MS. WARSHAW: Can we take a five minute
12 break?

13 THE COURT: Sure.

14 MS. WARSHAW: Okay.

15 (BRIEF RECESS)

16 THE COURT: J., how are you?

17 J.H.: I'm good.

18 THE COURT: Okay. I'm sure your -- your
19 attorney told you what I said --

20 J.H.: Yeah.

21 THE COURT: -- when I asked you to leave the
22 room. I didn't meant to be abrupt with you, but it is
23 highly unusual for the child and you're still a child
24 in a special education case to testify. It's really --
25 and I don't mean -- I don't mean to be disrespectful.

1 It is not going to help me make a decision what you're
2 going to tell me. What's going to help me make a
3 decision are the factual statements that were made to
4 me by the various witnesses from the school and by the
5 -- by the witnesses that were called by your attorney
6 to tell me what situation you're in and how that could
7 be remedied.

8 So what you're going to tell me is you're going to
9 help me -- it's highly unusual and quite frankly I
10 didn't notice you were there in the beginning and -- I
11 didn't, because I was -- I had this view and you were -
12 - you were -- your face was blocked out by the thing.
13 When I finally realized well, that's a young girl
14 there, that must be J.

15 Had I known initially I would have asked you and
16 your Mom to go sit outside, because what has to be said
17 about your situation can be trying to you and I think
18 it's -- I really personally think it's not appropriate
19 for you to be here and listen to what has to be said.
20 I mean, in your situation it's not quite as bad as
21 other children that have special ed. needs, but to hear
22 what has to be said can be -- can be problematic for
23 you.

24 So I understand you wanted to testify, that
25 you're strong and you want to go forward with that, but

1 I'm not going to allow it and I'm -- so for that matter
2 we're done today. Okay.

3 Okay? We're done. Very good. Our next date
4 is the 29th, yes? You have one more witness?

5 MS. WARSHAW: I have three more witnesses.

6 THE COURT: Excuse me?

7 MS. WARSHAW: I have three more witnesses.

8 THE COURT: You have three more witnesses?

9 Oh, I thought you only had one. Let's go off -- we
10 don't need to be on the record.

11 {Whereupon, the proceedings were adjourned.}

12 * * * * *

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1 STATE OF NEW JERSEY }

2 COUNTY OF }

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4 I, Lee A. Romano, assigned transcriber, do
5 hereby affirm that the foregoing is a true and accurate
6 transcript of the proceedings in the matter of F.H. and
7 M.H. on behalf of J.H. v. West Morris Regional High
8 Board of Education, bearing Docket No. EDS 10706-17,
9 heard on July 25, 2018, before the Office of
10 Administrative Law Court.
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STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO. EDS 10706-17

_____	:	
F.H. AND M.H. ON BEHALF	:	
OF J.H.,	:	
	:	
Petitioner,	:	
	:	TRANSCRIPT
-vs-	:	OF
	:	RECORDED PROCEEDINGS
WEST MORRIS REGIONAL	:	
HIGH BOARD OF EDUCATION,	:	
	:	
Respondent.	:	
_____	:	

August 29, 2018

BEFORE:

THE HONORABLE THOMAS BETANCOURT, A.L.J.

APPEARANCES:

WARSHAW LAW FIRM, LLC
By: Julie Warshaw, Esq.
Attorney(s) for the Petitioner

CLEARY GIACOBBE ALFIERI JACOBS LLC
By: Jodi S. Howlett, Esq.
Attorney(s) for Respondent

Transcriber: Lee A. Romano
CRT SUPPORT CORPORATION
2082 Highway 35, P.O. Box 785
South Amboy, N.J. 08879
Phone: (732) 721-4330
Fax: (732) 721-7650

I N D E X

2

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
NICOLE DOWD				
By Ms. Warshaw	5		26	
By Ms. Howlett		25		
CHRISTINE DUVALL				
By Ms. Warshaw	28			
By Ms. Howlett		38		
NATALIE SCHUBERTH				
By Ms. Warshaw	43		84	
By Ms. Howlett		79		

E X H I B I T S

3

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
P-40	Duvall's observation notes		43
P-42	2017-2018 fall term report card		19
P-43	2017-2018 spring interim report card		19
P-44	College Board accommodation letter		25
P-48	Duvall curriculum vitae		43
P-49	Letter		19

1 THE COURT: Okay. This is the continued
2 hearing in the matter of F.H. and M.H. on behalf of
3 J.H. v. West Milford -- West Milford -- West Morris
4 Regional Board of Education, docket numbers EDS 10706-
5 17.

6 Today is the 20 -- August 29, 2018. I'm
7 Judge Betancourt.

8 Appearances for Petitioners?

9 MS. WARSHAW: Julie Warshaw, Warshaw Law Firm
10 on behalf of Petitioners.

11 THE COURT: Good morning.

12 MS. HOWLETT: Jodi Howlett, Cleary, Giacobbe,
13 Alfieri, Jacobs, on behalf of Respondent School
14 District.

15 THE COURT: Good morning. Good morning to
16 you unknown person.

17 THE WITNESS: Good morning.

18 THE COURT: I assume she's your witness?

19 MS. WARSHAW: Yes, Your Honor.

20 THE COURT: Would you raise your right hand
21 please?

22 N I C O L E D O W D, PETITIONER'S WITNESS, SWORN:

23 THE COURT: Thank you. State your name and -
24 -

25 THE WITNESS: Nicole -- Nicole Dowd.

Dowd - Direct

5

1 THE COURT: Spell your last name.

2 THE WITNESS: D-O-W-D.

3 THE COURT: Thank you, Ms. Dowd. Proceed.

4 MS. WARSHAW: Okay. Thank you.

5 DIRECT EXAMINATION BY MS. WARSHAW:

6 Q Ms. Dowd, where are you employed?

7 A Purnell (phonetic) School.

8 Q And how long have you been employed there?

9 A This will be my second year.

10 Q What is your job title?

11 A I'm a teacher in the STEM department as well as a
12 learning specialist in our LAC program.

13 MS. HOWLETT: Your Honor, can I ask what the
14 proffer of this witness is?

15 THE COURT: You can.

16 MS. WARSHAW: Part of the -- the case is that
17 we placed her unilaterally at the Purnell School and
18 part of it also is to show that she's doing well and
19 also what the issues are that the Purnell School has
20 seen when she got there as well as now and those are
21 relevant to our case as to, you know, why this is an
22 appropriate placement for her.

23 MS. HOWLETT: Your Honor, Respondent objects
24 to this witness. As per Your Honor's order, the
25 Court's order, first of all this witness -- it's from

1 Purnell School which the student was placed after the
2 date of the IEP and has no relevance to whether the
3 District offered the student FAPE.

4 MS. WARSHAW: And Your Honor, you had allowed
5 us to file an amended complaint and in that amended
6 complaint it not just looks at the time that the IEP
7 was initiated, but it also goes through the time that
8 the parties were trying to work something out for
9 placement as well as the independent evaluation --

10 THE COURT: Settlement discussions are not
11 coming into play here at all. I'm not going to --

12 MS. WARSHAW: I'm sorry?

13 THE COURT: You're talking about settlement
14 discussions?

15 MS. WARSHAW: No, but it was during the time
16 frame that we were trying to work something out plus
17 the independent evaluations came in and that is part of
18 --

19 THE COURT: After the IEP?

20 MS. WARSHAW: -- our -- correct, but that's
21 also part of the due process action. We're not just
22 looking at the -- the moment in time that the IEP was
23 formulated. We're looking at whether or not that IEP
24 would have even met her needs and also, you know, the
25 independent evaluations and what they were and -- and

1 if they were applied and also the unilateral placement
2 and whether or not that was appropriate and she is
3 going to testify as well as our next witness about the
4 appropriateness of the Purnell School.

5 THE COURT: Your next witness is also from
6 the Purnell School?

7 MS. WARSHAW: Yes and she's the counselor at
8 the Purnell School.

9 THE COURT: Last word.

10 MS. HOWLETT: This witness and any witness
11 from Purnell School has no relevance as to whether the
12 District complied with the IDEA or whether the IEP was
13 reasonably calculated to offer meaningful educational
14 benefit to this student. So we object.

15 MS. WARSHAW: Your Honor, I have to show that
16 the --

17 THE COURT: Last word means last word.

18 All right. I'm going to take five minutes.
19 I'm going to think about this seriously, because I'm
20 not sure I'm going to allow this witness.

21 (BRIEF RECESS)

22 MS. WARSHAW: -- do that. There's only a few
23 of them.

24 THE COURT: Okay. We're back on the record.
25 We had some colloquy about joint exhibits and

1 Petitioner's exhibits and Respondent's exhibits which
2 will be rectified before we're finished I'm sure.
3 Actually I'm not sure, but I hope so.

4 All right. I've made a decision. I'm going
5 to allow Ms. Dowd to testify. You can proceed with
6 your direct.

7 And your objection is noted, Ms. Howlett.

8 MS. HOWLETT: Thank you, Your Honor.

9 BY MS. WARSHAW:

10 Q Ms. Dowd, can you describe for us your job
11 responsibilities at the Purnell School?

12 A I am a teacher there. So I teach math and science
13 classes as well as I meet students one on one with --
14 if they need some remediation or help with executive
15 functioning.

16 Q Are you also a school counselor as well?

17 A No, I am not.

18 Q No. Okay. Did you have J.H. -- and we're
19 going to refer to the Petitioner as J.H., her initials.
20 Was J.H. in any of your classes at the Purnell School?

21 A Yes. She was in my algebra two class.

22 Q And how would you characterize your
23 relationship with J.H.?

24 A I knew her as a student in my class as well as she
25 was my advisee for the school year. So I met her once

1 a week to talk about how she was feeling at school and
2 academics.

3 Q And what is your -- what are your job
4 responsibilities as school advisor?

5 A We are the contact with a student's parent and as
6 I said we meet them once a week and go over academics
7 as well as anything the student may wish to talk about.
8 So that can vary.

9 Q Do you recall any issues regarding J.H.
10 academically that you would have discussed with her?

11 A No.

12 Q Can you please describe for the Court what
13 J.H. was like emotionally when she first started at the
14 Purnell School?

15 A She was quiet and reserved.

16 Q Anything else?

17 A No.

18 Q Okay and can you describe for the Court what
19 J.H. was like academically when she first started at ht
20 Purnell School?

21 A She was a very conscientious student, always
22 arrived on time with the right materials, good listener
23 in class.

24 Q Were you ever made aware that J.H. had a
25 specific learning disability in math?

1 A Yes.

2 MS. HOWLETT: Your Honor, objection. That's

3 --

4 THE COURT: Sustained.

5 MS. HOWLETT: Thank you.

6 THE COURT: Where are you going with that?

7 MS. WARSHAW: I'm just asking her whether or

8 not she was made aware of that because my next

9 questions would talk about whether or not she gave any

10 accommodations for her.

11 MS. HOWLETT: That's a fact not in evidence,

12 Your Honor. We haven't established that the student

13 has a learning disability in math.

14 MS. WARSHAW: Okay. Our next -- one of our

15 next witnesses will certainly do that and also in our

16 joint exhibit binder is the report from Dr. Schuberth

17 which diagnoses her as specific learning disability.

18 MS. HOWLETT: Under the DSM, Your Honor, not

19 the Code.

20 THE COURT: Got it. Ask another question.

21 BY MS. WARSHAW:

22 Q Did you ever provide -- strike that.

23 I'm going to refer you to what's been marked

24 P-49. Turn to that exhibit in the binder in front of

25 you.

1 Can you identify what that is?

2 A It's a letter I wrote describing J. at our school
3 this past year.

4 Q And in this letter in the fifth paragraph do
5 you identify some issues that J.H. had with regard to
6 learning?

7 A I did.

8 Q And what are those?

9 A Slower processing speed and dyscalculia.

10 THE COURT: Say that last one again.

11 THE WITNESS: Dyscalculia.

12 MS. WARSHAW: Can you --

13 THE COURT: Thank you.

14 MS. WARSHAW: Do you want it spelled, Your
15 Honor?

16 THE COURT: No. I want to know what it is.

17 MS. WARSHAW: Okay. That's what my next
18 question was.

19 THE COURT: Thank you.

20 BY MS. WARSHAW:

21 Q Can you describe for the Court what
22 dyscalculia is?

23 A It's a math learning disability.

24 MS. HOWLETT: Your Honor, is this witness
25 qualified to diagnose --

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12

1 THE COURT: That was going to be my next
2 question. Why don't you ask her that? What's her
3 background in -- able to diagnose --

4 MS. WARSHAW: I'm not asking her to diagnose
5 it.

6 THE COURT: Well, you're going to have to if
7 she's going to testify about it. If she doesn't have a
8 background in this I'm not going to allow it.

9 MS. WARSHAW: I'm just asking her what this
10 was.

11 THE COURT: No, no.

12 MS. WARSHAW: Ms. Dowd --

13 THE COURT: No, no. She just testified that
14 she identified it. That was your question. In
15 paragraph five did you identify issues with her
16 education or words to that effect and she said, "Yes.
17 Slower processing speed and," could you say that last
18 word again?

19 THE WITNESS: Dyscalculia.

20 THE COURT: Thank you.

21 MS. WARSHAW: I'm not -- okay. I will
22 clarify with my question.

23 THE COURT: Please.

24 BY MS. WARSHAW:

25 Q Ms. Dowd, did you diagnose J.H. with these

1 two issues or were they told to you at some point?

2 A They were told to me.

3 Q Okay. Who told you?

4 A We have an educational psychologist at Purnell and
5 she told us information.

6 Q And what's that person's name?

7 A Martha Torrez (phonetic).

8 Q Okay. Thank you.

9 In your classroom did you provide any
10 accommodations for J.H.?

11 A Yes. She was always allowed for untimed tests and
12 quizzes as well as use of a calculator.

13 Q You mentioned something in your letter about
14 a flipped classroom. Can you describe what that is?

15 THE COURT: A flip, F-L-I-P?

16 MS. WARSHAW: Flipped, F-L-I-P-P-E-D.

17 THE COURT: Thank you.

18 THE WITNESS: That is where for certain
19 lessons I make a video that the students will watch on
20 their own time. It's a short, ten to 15 minutes where
21 they can get some of the definitions in the beginning
22 concepts and have the ability to rewind it, take notes
23 at their own speed, come into class all ready with
24 questions.

25 BY MS. WARSHAW:

1 Q And can you describe the learning environment
2 in your classroom at the Purnell School?

3 A We have small classrooms. There was usually eight
4 to ten students in a class, quiet, individualized
5 attention.

6 Q Can you describe for us the academic level of
7 the students at the Purnell School?

8 A It is a college preparatory school. So they --
9 all our classes are geared towards that and there's 100
10 percent college admission for our last graduating
11 class.

12 Q And in your opinion do you feel that J.H. fit
13 into that academic environment?

14 A She did.

15 Q If a student is feeling stressed or needs a
16 break during school at the Purnell School do they have
17 a place to go?

18 A They do. In between classes they may go to their
19 dorm room or if it's during a class they may go to the
20 health center and sit with the nurse or there's some
21 quiet rooms in there they can go or speak with the
22 counselor.

23 Q And even if a student is not a residential
24 student are they assigned a dorm room?

25 A They are.

1 Q And where do the students eat lunch at the
2 Purnell School?

3 A In the dining hall.

4 Q And how many students are at the school?

5 A This past year there was 58 students.

6 THE COURT: How many?

7 THE WITNESS: Fifty-eight.

8 THE COURT: Thank you.

9 BY MS. WARSHAW:

10 Q To your knowledge does J.H. have friends at
11 the Purnell School?

12 A Yes, she does.

13 Q And how -- if you can describe for the Court
14 how J.H. did academically in your class as well as if
15 your advisor, if you knew of anything personally about
16 the other classes?

17 A J.H. made all A's last -- last year at Purnell
18 School. She did very well. As her advisor speaking to
19 other teachers they always had very positive things to
20 say about her and her school work. In my class it was
21 the same.

22 Q And to your knowledge did J.H. take advantage
23 of the accommodations that you provided in your class
24 for her?

25 A She always had her calculator out. I don't

1 remember if she always used the extended time, but it
2 was always offered to her.

3 Q To your knowledge has J.H. ever had any
4 behavior issue at school?

5 A No.

6 Q To your knowledge did you notice a difference
7 in J.H.'s level of anxiety and depression from the time
8 that she started at the Purnell School until the time
9 at the end of the school year?

10 A I -- I don't know.

11 Q Did J.H. ever talk to you about attending
12 college?

13 A Yes, she did.

14 Q To your knowledge has she visited any
15 colleges or universities?

16 A Yes. She did. She has.

17 Q I'm going to refer you to P-42 and P-43. Can
18 you look at those exhibits?

19 A Yes.

20 MS. HOWLETT: Your Honor, these exhibits come
21 again after -- they're not in compliance with the
22 Court's order where the Petitioner is only permitted to
23 enter or submit evidence after the date of the IEP for
24 the purpose of demonstrating that the District didn't
25 comply with the IDA. So I'm just curious how these

1 documents do that.

2 THE COURT: I don't know what they are. What
3 are they?

4 MS. WARSHAW: They're report cards with a --
5 from the Purnell School.

6 THE COURT: I'll allow the report cards.

7 BY MS. WARSHAW:

8 Q Have you seen these report cards before?

9 A Yes.

10 Q Okay. To your knowledge are they --

11 THE COURT: P-42 is a report card for which -
12 - which --

13 MS. WARSHAW: It's the first --

14 THE COURT: -- is it -- is it a marking
15 period? Is it this year? Last year?

16 MS. WARSHAW: Correct. It's the first
17 marking --

18 THE COURT: Let's identify it so I know what
19 it is.

20 MS. WARSHAW: Okay.

21 BY MS. WARSHAW:

22 Q Ms. Dowd, can you describe for us what the
23 report card is and what time frame for --

24 THE COURT: Start with --

25 MS. WARSHAW: P-42.

1 THE COURT: Thank you.

2 THE WITNESS: P-42 is the fall term report.

3 THE COURT: For which year?

4 THE WITNESS: So it would have been 2017-
5 2018, the fall term.

6 BY MS. WARSHAW:

7 Q And to your knowledge is -- is that report
8 card accurate as her advisor?

9 A Yes.

10 Q And you had testified that she received all
11 A's. Is that accurately reflected in that report card?

12 A Yes.

13 Q And are there comments in that report card
14 from her teachers?

15 A Yes, there is.

16 Q Turning to P-43, can you identify the time
17 frame for those -- that report card?

18 A This was the -- in the spring of 2017-2018 school
19 year, interim. So halfway into the spring term.

20 Q And can you tell me if those grades
21 accurately reflect your knowledge of J.H.'s grades at
22 that time?

23 A Yes, they do.

24 Q Okay and are those all A grades as well?

25 A They are. Yes.

1 Q And are there comments by all the teachers
2 about her performance?

3 A Yes.

4 MS. WARSHAW: Your Honor, I'd like to enter
5 those into evidence. P-49 which is her letter as well
6 as P-42 and P-43.

7 MS. HOWLETT: Your Honor, I maintain my
8 objection.

9 THE COURT: I'm going to allow them.

10 (P-42, P-43 and P-49
11 were received in
12 evidence.)

13 BY MS. WARSHAW:

14 Q You mentioned earlier that J.H. uses a
15 calculator. Do you know if she was ever approved for
16 using a calculator for any other entity?

17 A For the college boards she was allowed extended
18 time as well as the use of a four function calculator
19 on the non-calculator portion.

20 Q I'm going to refer you to P-44 and can you
21 tell me if you recognize that document?

22 A It's from the college board for J.H.'s
23 accommodations.

24 Q Okay and just for the Court's knowledge the
25 college board is for what?

1 A It would be for the -- the PSAT and the SAT.

2 THE COURT: Is this a letter?

3 BY MS. WARSHAW:

4 Q Is that -- can you describe what that
5 document is?

6 A It is a letter from the college board to J.H.
7 telling her what she has been approved on for their
8 testing.

9 MS. HOWLETT: Your Honor --

10 THE COURT: Okay.

11 MS. WARSHAW: And those --

12 MS. HOWLETT: -- we object again to this. I
13 don't -- I don't know how this demonstrates whether the
14 District complied with the IDEA.

15 THE COURT: Neither do I, but I'm going to
16 allow it.

17 MS. WARSHAW: Your Honor, there's more to
18 this than just the District complying to the IDEA. We
19 also have to show that the -- that the placement was
20 appropriate for her that unilaterally placed her and
21 I'm demonstrating that, that this was appropriate for
22 her as well as that she was receiving --

23 THE COURT: I understand --

24 MS. WARSHAW: -- accommodations --

25 THE COURT: -- what you're doing. First, you

1 got to establish that FAPE wasn't offered. I mean, at
2 this point -- I know you made a motion to dismiss which
3 I denied, because we don't have that rule, but at this
4 point the School District established FAPE. You
5 haven't rebutted it yet and you're going on to whether
6 or not the placement was correct.

7 MS. WARSHAW: Well, there is another witness
8 coming --

9 THE COURT: Okay.

10 MS. WARSHAW: -- today that the expert
11 witness that will certainly address that as well.

12 THE COURT: Okay. I'm going to allow the
13 questions and -- and --

14 MS. WARSHAW: Thank you, Your Honor.

15 THE COURT: Okay. Go ahead.

16 MS. WARSHAW: Your Honor, I have to note at
17 this time the concern of Petitioners that the Court has
18 indicated that the School District has demonstrated
19 FAPE when we're still in the middle of presenting
20 evidence as to whether or not --

21 THE COURT: I'm questioning -- I'm
22 questioning why you're presenting a witness who's --
23 who's -- who's -- who's -- who's testimony seems to be
24 that the Purnell School is the appropriate placement.
25 That may well be and she's certainly testifying to

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22

1 that, but I mean, there's -- it's a two prong test.
2 The first test is whether or not FAPE was offered. If
3 FAPE wasn't offered then this is the appropriate next
4 step and you --

5 MS. WARSHAW: Correct.

6 THE COURT: -- haven't addressed FAPE in your
7 -- in your case. Ms. Howlett has in her case
8 obviously. That's her burden.

9 MS. WARSHAW: Well, we -- we have addressed
10 it with certain witnesses to date, but also we have
11 another witness coming at 10:30 that will address it as
12 well.

13 THE COURT: Very well. Thank you.

14 BY MS. WARSHAW:

15 Q Okay. Can you just -- Ms. Dowd, can you
16 just clarify for the Court what accommodations J.H. was
17 approved for by the college board?

18 A A four function calculator for use on the math
19 sections, reading, writing and math calculations time
20 and a half.

21 THE COURT: That's the extended time?

22 THE WITNESS: Yes.

23 THE COURT: Okay. Thank you.

24 BY MS. WARSHAW:

25 Q Based on your knowledge of J.H. do you feel

1 that she would be able to learn using a computer based
2 online program as opposed to a classroom?

3 A No.

4 Q And can you describe why not?

5 A Her accommodations may still not be used or her
6 disabilities recognized and she wouldn't be allowed to
7 have that one on one interaction with the teacher.

8 MS. WARSHAW: No further questions.

9 THE COURT: I have a question. You're not
10 going to know the answer to that. That was offered --
11 was it online -- online -- online computer classes
12 offered to J.H. as part of the IEP? I don't recall.

13 MS. HOWLETT: No, Your Honor.

14 THE COURT: It wasn't.

15 MS. HOWLETT: It was an in District
16 placement.

17 THE COURT: Okay.

18 MS. WARSHAW: Your -- the --

19 THE COURT: I'm not -- somehow -- and I have
20 -- I've reviewed the notes this morning, but I don't
21 remember -- I remember somehow that that came up during
22 the course of this, but I don't -- I don't -- I don't
23 seem to have it in my notes and I -- I just want some
24 clarity on -- on -- I mean, you asked the question and
25 I -- I know there's a reason for it, but I -- help me

1 here.

2 MS. WARSHAW: Your Honor, in the behavior
3 support program she was offered online programs such as
4 gym class and if she was unable --

5 THE COURT: That's what it thought.

6 MS. WARSHAW: Right and -- and if she was not
7 able to go into the general ed. setting for college
8 preparation classes she could do it online in the
9 behavior support program.

10 THE COURT: I thought that was part of your
11 case.

12 MS. WARSHAW: Correct.

13 THE COURT: Ms. Howlett?

14 MS. HOWLETT: There could be alternatives for
15 that if she --

16 THE COURT: Yeah.

17 MS. HOWLETT: -- but that -- that's not what
18 the IEP provides.

19 THE COURT: Okay. All right. I may ask you
20 both to address it in your closings, because I think
21 that's an important -- that's an important element for
22 me to know. Okay?

23 MS. WARSHAW: Your Honor, I'd like to just
24 enter P-44 into evidence.

25 MS. HOWLETT: We maintain our objection,

1 Your Honor.

2 THE COURT: Over your objection.

3 (P-44 was received

4 in evidence.)

5 THE COURT: Cross?

6 MS. HOWLETT: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MS. HOWLETT:

8 Q Just a couple questions, Ms. Dowd. Just give
9 me one second. I'm sorry.

10 What sort of licenses and certifications do
11 you hold?

12 A I have a teaching certification in Georgia. I'm
13 in the process of transferring it to New Jersey.

14 Q So you don't have a teaching certificate in
15 New Jersey?

16 A Not at this time, no.

17 Q Do you have a -- are you a licensed LDTC?

18 A No.

19 Q Are you a licensed school psychologist?

20 A No.

21 Q Do you have any qualifications that allow you
22 to diagnose disabilities in children?

23 A No.

24 Q Do you have a certification in special
25 education?

1 A In Georgia.

2 Q In Georgia. Did you ever observe the Being
3 Successful program at Mendham High School?

4 A I did not. No.

5 Q Did you review the IEP that the District
6 provided to J.H.?

7 A I never saw that, no.

8 MS. HOWLETT: No further questions, Your
9 Honor.

10 THE COURT: Any redirect?

11 MS. WARSHAW: Yes.

12 REDIRECT EXAMINATION BY MS. WARSHAW:

13 Q Ms. Dowd, did -- did you ever diagnose J.H.
14 with any type of learning disability?

15 A No.

16 THE COURT: Yeah. We established --

17 MS. WARSHAW: Were you informed --

18 THE COURT: -- we established that. I got
19 that. You cleared it up.

20 MS. WARSHAW: Okay.

21 THE COURT: All right. It was the school
22 psychologist who informed her of that.

23 MS. WARSHAW: Correct.

24 THE COURT: Okay.

25 BY MS. WARSHAW:

1 Q Okay. Ms. Dowd, can you just please tell the
2 Court the degrees that you hold?

3 A I have a Bachelors degree in math from University
4 of Chicago and MST in mathematics from the University
5 of Florida.

6 Q Thank you.

7 THE COURT: Okay. You can step down. Thank
8 you very much.

9 So we can take a ten -- half an hour break
10 for your next witness?

11 MS. WARSHAW: I have another witness and then
12 there's a third one.

13 THE COURT: Oh okay. All right. So we can
14 keep moving. Great.

15 MS. WARSHAW: Yes.

16 THE COURT: All right.

17 THE WITNESS: Do you want me to leave this
18 here?

19 THE COURT: Yes please. Leave that there.

20 MS. WARSHAW: Thank you.

21 THE COURT: All right. I'm just going to
22 pause the recording until the next witness.

23 (Pause in recording.)

24 THE COURT: Good morning.

25 THE WITNESS: Good morning.

1 THE COURT: Would you raise your right hand
2 please?

3 M E G A N C H R I S T I N E D U V A L L ,

4 PETITIONER'S WITNESS, SWORN:

5 THE COURT: Thank you. Would you state your
6 name and spell your last name please?

7 THE WITNESS: Megan Christine Duvall, that's
8 D-U-V-A-L-L.

9 THE COURT: M-E-G-H-A-N?

10 THE WITNESS: M-E-G-A-N.

11 THE COURT: M-E-G-A-N. I should have asked
12 you to spell both.

13 Proceed.

14 DIRECT EXAMINATION BY MS. WARSHAW:

15 Q Ms. Duvall, thank you for coming. Can you
16 please tell us where are you employed?

17 A I'm employed at the Purnell School.

18 Q And how long were you employed there?

19 A I was employed for two years.

20 Q And what is your job title?

21 A School counselor.

22 Q And did you hold that position the whole time
23 you were at the Purnell School?

24 A Um-hum. I held it for two years and then I was
25 director advising this last year as well.

1 THE COURT: I'm sorry. Director of what?

2 THE WITNESS: Advising.

3 THE COURT: Okay.

4 BY MS. WARSHAW:

5 Q So were you J.H.'s counselor?

6 A Yes.

7 Q Were you also her advisor?

8 A No.

9 Q And what were your job responsibilities as
10 the school counselor?

11 A So I focus mainly on the social emotional. I
12 didn't do the academics or the scheduling. That was
13 somebody else. So I did guidance lessons, group --
14 group counseling and individual counseling.

15 Q I'm going to show you what's been marked P-
16 48. Can you turn to that exhibit?

17 A Yup.

18 Q And can you identify for the Court what that
19 is?

20 A That is my curriculum vitae.

21 Q How long have you been a therapist or a
22 school counselor?

23 A Well, school counselor the last two years at the
24 Purnell School. Before that I was a regular therapist
25 doing mobile therapy work in people's houses.

1 Q And how long did you do that?

2 A I did that for -- so my husband was in the
3 military. So I graduated with a Masters in 2014 and
4 from there we moved a couple different places, because
5 he was in training, but while I was there I worked at a
6 place called Shelter Care. That is for students who
7 are going into juvenile detention or coming out of it
8 and I was their counselor working with them and then
9 from there I did mobile therapist work and then I was a
10 school counselor at Purnell.

11 Q And can you tell me how many years you've
12 worked with adolescents?

13 A Since -- well, that -- since I've graduated since
14 2014. Before that I did my internship for a year. So
15 I would say five years.

16 Q And have you worked with adolescents with
17 anxiety and school related anxiety?

18 A Yes.

19 Q And how about depression?

20 A Yes.

21 Q And you testified that you had occasion to
22 work with J.H. Can you describe the work that you did
23 with J.H.?

24 A Yeah. We met once a week and I've met with her
25 since the beginning of the year, because I knew coming

1 in that she had anxiety and depression in the past. So
2 we met weekly and we really worked on coping skills and
3 utilizing them and just how she is adjusting to this
4 new school.

5 Q And can you describe J.H. at the time that
6 she entered the Purnell School?

7 A Sure. When she first got there -- her first day I
8 think she had a little bit of harder time. She was
9 very anxious about coming. Then she didn't stay for --
10 all the activities and in her first month just watching
11 her, she was-- she kind of kept to herself at first
12 just because I think she was new. It's a new
13 environment, but after about the second month she was
14 really putting herself out there, making friends,
15 sitting with new people and just she was -- she was
16 getting out of her comfort level. She was getting out
17 of her shell.

18 Q And can you describe J.H. emotionally from
19 your knowledge, you know, at the end of this school
20 year how was she?

21 A Well, yeah. So at the beginning of the school
22 year when I first started counseling her she was very
23 shy, very reserved, didn't want to give too much
24 information at first, but by the end of the year she
25 was excited to come to our counseling session. She was

1 like -- I want to talk to you about this week, so she
2 was always willing to talk and like divulge so much
3 information just to like tell me and get off her chest
4 and see what's going on so we can process it together.

5 Q And in -- in your opinion do you feel that
6 J.H. gained coping skills with her anxiety and
7 depression?

8 A Yes.

9 Q I'm going to refer you to P-40.

10 A Okay.

11 Q Can you describe for me what those are?

12 A Those are just my observations from -- that I
13 wrote down about J. for the first about month of
14 school.

15 Q Okay and what's the date of that report?

16 A October 12th, 2017.

17 THE COURT: Is it a report or is it --

18 MS. WARSHAW: I'm sorry. A letter.

19 THE COURT: It's a letter. Okay.

20 MS. WARSHAW: A letter.

21 THE COURT: Thank you.

22 BY MS. WARSHAW:

23 Q Can you describe for the Court, just
24 summarize kind of what is in that -- that letter?

25 A Yes. The first paragraph just says how she has

1 been adjusting to Purnell and I said so far she's very
2 organized, she's up to date on all of her class work,
3 she's not really stressed out about that and then I
4 ended it with -- she's opening up and willing to work
5 on some social anxiety with surrounding school. So
6 that's when she really started opening up and trusting
7 me.

8 Q And can you describe the school setting at
9 the Purnell School?

10 A Sure. Purnell is about 58 girls and it's a very
11 small environment. We're very small community. The
12 classroom sizes are small between five and it gets as
13 big as 20 if that's a new seminar, but that only meets
14 twice a week.

15 It's just very a safe space. There -- they get
16 comfortable with each other because they're always
17 there the same people, because it's a boarding school.
18 So they feel comfortable with the teachers and we get
19 to know them on different levels and just speaking up
20 more in class.

21 Q To your knowledge did J.H. have some friends?

22 A Yes.

23 Q Yes?

24 A Um-hum.

25 Q Okay. If you turn the page, there's another

1 letter. Did you write this?

2 A Forty-one?

3 Q It has the letterhead on it. It says,

4 "Purnell School."

5 THE COURT: What was the number?

6 MS. WARSHAW: It's also P-40.

7 THE COURT: Oh, it's the same --

8 MS. WARSHAW: It is. It's just the next
9 page.

10 THE WITNESS: Yes. I wrote that.

11 BY MS. WARSHAW:

12 Q And is there a date on this letter?

13 A There's not a date and I apologize. I'm looking
14 at that, but I remember writing it in the spring, the
15 second semester.

16 Q Okay. Can you describe to the Court what
17 this letter says about J.H.?

18 A This is just about her progress from when she
19 started and then how she is, I mean that second
20 semester and basically how much she has come out of her
21 shell. For instance one thing I'm going to name in
22 here is, you know, she does have performance anxiety
23 and she has anxiety around some classrooms, but by the
24 second semester she was a lead in the school play that
25 she had to try out for and sing in front of everybody.

1 She stayed in like a dance class. She doesn't want a
2 dance class. She tried it and she had anxiety with it,
3 but she stayed in it and she killed it, like she did so
4 well. So she's just trying new things and like getting
5 past her anxiety and coping with them so she can do fun
6 thing and get out of her comfort zone.

7 Q Are there any other types of therapy aside
8 from counseling available at the Purnell School?

9 A So I was the only school counselor there for two
10 years. They got a school psychologist this last year
11 and now they just hired another psychologist.

12 Q And does the -- does the psychologist that
13 was there for this year to your knowledge did that
14 person ever meet with J.H.?

15 A I don't know. I'm not sure.

16 Q If a student is stressed or -- or needs a
17 break, is there a place for them to go at the Purnell
18 School?

19 A And that's what's -- what's great about it. They
20 can go to the dorm room. That's their safe space. A
21 lot of the times though the girls actually come to the
22 health center. They come to the health center to just
23 relax in my office if they want to or in the health
24 center they have rooms they can go to to just rest and
25 like deep breath before they go back out.

1 Q And did J.H. ever take advantage of those --
2 those services available?

3 A Only -- I -- for me when she came to see me
4 outside of our counseling session only one time.

5 Q And to your knowledge how was J.H. performing
6 academically at the Purnell School?

7 A To the best of my knowledge she's doing very well.
8 Once a week we have wellness meetings and we go over
9 academic and social supports with the various --
10 teachers, various amount of teachers and she was never
11 brought up academically. She never struggled. She was
12 never one of our students that we worried about
13 academically at all. She was always one -- higher
14 achieving ones.

15 Q Were you ever informed that J.H. had a
16 specific learning disability or any type of learning
17 disability?

18 A At the beginning of the year.

19 MS. HOWLETT: Object, Your Honor.

20 THE COURT: I'm going to allow it. Go ahead.
21 Answer the question.

22 THE WITNESS: Yeah, at the beginning of the
23 year.

24 BY MS. WARSHAW:

25 Q And do you know who informed you of that?

1 A The school psychologist.

2 Q To your knowledge has J.H. ever had any
3 behavior issue at school?

4 A No.

5 Q And can you describe the academic rigor or
6 the Purnell School?

7 A Sure. It's -- it's a college prep school. So I
8 think what makes Purnell a little different than the
9 public schools or any other school is they go through
10 the same amount of work, they just focus on it a little
11 longer and like really dive into it and get more
12 information instead of just going to it real quick and
13 skipping over it. So we just dive into things.

14 Q Did J.H. ever talk to you about attending
15 college?

16 A Yes.

17 Q To your knowledge has she visited any
18 colleges?

19 A Yes.

20 Q I'm going to refer you to what's been marked
21 P-42 and 43.

22 A Um-hum.

23 Q Have you ever seen those reports before?

24 A No. I haven't.

25 Q Okay. Were you aware that J.H. was approved

1 for accommodations through college board?

2 A Yes, 7

3 Q Did you ever see any kind of letter, anything
4 indicating such?

5 A No, just the school psychologist mentioned it in
6 our wellness meeting.

7 Q And do you have an opinion as to based on
8 your information from J.H. and your meetings with her
9 as to what she is doing to ensure that her anxiety and
10 depression are under control?

11 A Yeah. I think just from our meetings she has
12 learned some coping skills, like she takes a break --
13 if she starts getting anxious she knows when to walk
14 away and just take a breath before she comes back. She
15 likes to process things. So that's when she'd come to
16 me to talk about things, anything that's on her mind.
17 She likes to listen to music and write music sometimes.
18 So that's like her main coping skills. That really
19 worked for her.

20 MS. WARSHAW: No further questions.

21 THE COURT: Cross?

22 MS. HOWLETT: Briefly, Your Honor.

23 CROSS-EXAMINATION BY MS. HOWLETT:

24 Q Good morning, Ms. Duvall.

25 A Good morning.

1 Q What sort of licenses and certifications do
2 you hold?

3 A Yeah. I have a school counseling license in the
4 State of New Jersey and I'm currently a licensed
5 associate counseling in the State of New Jersey as
6 well.

7 Q So is that the educational services
8 certificate?

9 A No. So I'm -- I'm getting my license in licensed
10 professional counseling, before I get there I have to
11 have 4,000 hours of supervised hours before I get that.
12 So right now I'm intermediate, because I passed the
13 test. So I'm just a licensed associate counselor in
14 the State. So I can do agency and school for that.

15 Q So you don't hold an educational services
16 certificate through --

17 A School counseling.

18 Q -- the Department of Education?

19 A School -- yes. I have a school counseling
20 license.

21 Yes, I have a school counseling license for the
22 State of New Jersey.

23 Q The --

24 A And I hold it from the education. Yes. It's from
25 the Board of Education.

1 MS. HOWLETT: Your Honor can ask her a
2 question.

3 THE COURT: Let her -- let her finish --

4 THE WITNESS: I'm sorry.

5 THE COURT: -- the question. That's okay and
6 do me a favor, talk a little slower.

7 THE WITNESS: Okay. Sorry.

8 THE COURT: I'm old. I don't --

9 THE WITNESS: I'm a fast talker. Yes. I
10 know. I'm sorry.

11 BY MS. HOWLETT:

12 Q Do you hold an instructional certificate
13 through the Department of Education?

14 A Instructional? No.

15 Q Do you hold an educational services personnel
16 certificate through the Department of Education?

17 A Yes.

18 Q Okay. Thank you.

19 Counsel asked you about P-40. Those are two
20 of the letters that you indicated that you drafted.
21 One of them's dated in October and you said that the
22 other one's undated, but you recall -- I believe you
23 testified that you recalled writing that in the spring.

24 A Yes.

25 Q Is that correct? What caused you to write

1 these letters?

2 A The first one, the school asked me to do it, the
3 admissions director, Kate Davis and so I just wrote it
4 and then the second one Julie reached out to me. That
5 was in -- March, because I remember I was on spring
6 break when that happened.

7 Q Okay. So Counsel asked you to write the
8 letter?

9 A Um-hum.

10 Q Thank you. Did you ever observe the being
11 successful program at Mendham High School?

12 A Um-um.

13 Q Did you review the IEP that the District
14 provided for J.?

15 A No, because that's not my role.

16 MS. HOWLETT: No further questions, Your
17 Honor.

18 THE COURT: Any redirect?

19 MS. WARSHAW: No. Thank you, Your Honor.

20 THE COURT: You can step down. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: You have one more today?

23 MS. WARSHAW: One more.

24 THE COURT: They're not here yet?

25 MS. WARSHAW: I can check.

1 THE COURT: Okay. Let me pause the recording
2 while you do that. If not, we'll take a break.

3 (BRIEF RECESS)

4 THE COURT: We're back on the record.

5 Good morning. How are you?

6 THE WITNESS: Good morning. Good. How are
7 you?

8 THE COURT: Very good. Would you please
9 raise your right hand?

10 N A T A L I E S C H U B E R T H, PETITIONER'S
11 WITNESS, SWORN:

12 THE COURT: Thank you. Would you state your
13 name and spell your last name please?

14 THE WITNESS: Natalie Schuberth, S-C-H-U-B-E-
15 R-T-H.

16 THE COURT: Any relation to the theater
17 people?

18 THE WITNESS: No.

19 THE COURT: Too bad.

20 THE WITNESS: Not that I know of.

21 THE COURT: Okay. Ms. Warshaw, go ahead.

22 MS. WARSHAW: Thank you. Your Honor, before
23 we start with Dr. Schuberth, can -- I'd like to enter
24 P-48 and P-40 into evidence from the last witness.

25 MS. HOWLETT: Maintain my objection, Your

1 Honor.

2 THE COURT: Okay. They're in over Ms.

3 Howlett's objection.

4 (P-40 and P-48 were
5 received in
6 evidence.)

7 MS. WARSHAW: Thank you.

8 THE COURT: Okay.

9 MS. WARSHAW: Okay. Thank you.

10 DIRECT EXAMINATION BY MS. WARSHAW:

11 Q Hi Dr. Schuberth. Thank you for coming in.

12 Can you please tell the Court just your
13 involvement with this case, how you came about to know
14 J.H.?

15 A Sure and where do I find my report?

16 Q I can show you. It's going to be in a
17 smaller binder. I can give you mine.

18 THE COURT: Is that in the joint exhibits?

19 MS. WARSHAW: It's joint exhibit 31.

20 THE WITNESS: So I was contacted, I think it
21 was by you about a year ago to do an independent
22 psycho-educational evaluation on the student.

23 BY MS. WARSHAW:

24 Q Okay. Thank you. Can you please tell the
25 Court the highest degree that you have?

1 A Doctorate in psychology.

2 Q And where are you employed?

3 A Alexander Road Associates.

4 Q It's J-31 so you know.

5 THE COURT: Alexander who?

6 THE WITNESS: Alexander Road Associates.

7 MS. HOWLETT: J-18?

8 MS. WARSHAW: Oh I'm sorry. Your --

9 THE COURT: Thirty-one she said.

10 MS. WARSHAW: -- your resume. The resume --

11 THE WITNESS: That's my resume.

12 MS. WARSHAW: Okay.

13 THE WITNESS: Okay. I was just looking --

14 THE COURT: J-31 is the report?

15 MS. HOWLETT: Is the resume.

16 MS. WARSHAW: J-31 is her curriculum vitae.

17 THE WITNESS: Okay. I know that one.

18 THE COURT: Okay.

19 THE WITNESS: I know what's --

20 THE COURT: Thanks.

21 MS. WARSHAW: J-18 is her report.

22 MS. HOWLETT: I mean, Your Honor, we'll

23 stipulate that Dr. Schuberth is an expert and that her
24 C.V. speaks for itself unless Your Honor wants to hear
25 her qualifications.

1 THE COURT: I do not.

2 MS. HOWLETT: Do you promise to look --

3 MS. WARSHAW: -- resume.

4 THE COURT: I promise. I read everything. I
5 read everything I get.

6 MS. HOWLETT: And we have no objection to
7 entering it.

8 THE COURT: I read everything I get. I read
9 my notes over and over again. I actually listen to the
10 -- to the -- to the hearing recordings again, because
11 I'm not that smart and I need to refresh everything in
12 my head. That's why I asked you that question, because
13 I knew that somewhere in the back of my head and I -- I
14 didn't write it down for some reason, but I knew it had
15 to -- that question was asked about online learning,
16 but I'm sorry. Go ahead. Okay. You're an expert
17 without objection in psychology, yes?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Go ahead.

20 BY MS. WARSHAW:

21 Q All right. Okay. We're going to skip a lot
22 of the questions that I was going to ask you about your
23 qualifications because you've just been entered in as
24 an -- as an expert in evidence.

25 I'm going to refer you to J-18 in that

1 binder. That should be a copy of your report.

2 A Um-hum.

3 Q Is that correct? Okay. So when you were
4 hired to perform independent evaluation are you
5 typically provided with documents to review?

6 A Yes.

7 Q And can you tell me in general what documents
8 you typically received and from who?

9 A That's on page four. So it was the previous
10 psychological testing from the school and her
11 psychiatric evaluation and a report card.

12 Q And did you ever receive an educational
13 evaluation from the child study team?

14 A No.

15 Q Do you know if one was conducted?

16 A No.

17 Q And did the school district provide you with
18 a reason as to why you were doing this independent
19 evaluation?

20 A No. I didn't really talk to the school other than
21 to get the records.

22 Q Okay.

23 THE COURT: I'm sorry. I wasn't -- I wasn't
24 clear as to why the -- that question was asked. The
25 school --

1 MS. WARSHAW: Sometimes the schools will
2 contact the independent evaluators and explain what
3 they need or what the purpose of the evaluation is.
4 I'm just asking her in general if -- if that was done
5 in this case.

6 THE COURT: Okay.

7 MS. WARSHAW: That's all.

8 THE COURT: Thanks.

9 BY MS. WARSHAW:

10 Q I'm going to refer you to the first page of
11 your report. You have a section called "Reasons for
12 Referral."

13 A Um-hum.

14 Q Can you just briefly describe what your
15 understanding of why you were doing this independent
16 evaluation?

17 A That J. was diagnosed with depression and anxiety
18 and she has been having trouble going to school, but
19 she wanted to go to school. So to try to figure out if
20 there's some underlying reason why that's been
21 difficult.

22 Q When you see school testing have you ever
23 seen it without an educational evaluation?

24 A Not that I can remember. It's usually I.Q.
25 testing and educational and some emotional screener.

1 Q And can you describe for us the types of
2 reports -- types of testing that you did in general for
3 J.H.?

4 A I did intellectual, educational, executive
5 functioning, memory and emotional.

6 Q When J.H. was taking the tests -- the tests
7 and performing the tests in your presence did you make
8 any observations about her?

9 A She was really quiet and reserved, but she
10 persisted with testing. She would answer my questions,
11 but she didn't really initiate conversation and she
12 worked slowly and was slow to even start to answer and
13 then while she was answering she was kind of thinking
14 and answering slowly.

15 Q Okay. We're going to take your report and
16 kind of go step by step.

17 A Okay.

18 Q So you have a heading on page -- on page four
19 of your report, it says "Assessment of Intellectual
20 Functioning."

21 A Um-hum.

22 Q Could you walk us through some of your
23 findings under this heading?

24 A Sure. Give me one second to look at the scores.

25 So her overall intelligence was measured in the

1 average range. So that's just where it should be.
2 It's not a bad word. Just statistically where most
3 people her age fall. So her overall I.Q., her verbal
4 skills, her visual spatial skills were average. Her
5 processing speed was also average, but statistically it
6 was weaker than her other skills and working memory was
7 low average. That was her lowest score. So working
8 memory and processing speed were significant
9 weaknesses. So in the classroom that would be that she
10 just needs a little more time to take in information to
11 answer questions and that it -- she may have some
12 trouble with retaining information the first time that
13 she hears it.

14 Q And can you define like exactly what working
15 memory is?

16 A Sure. It's taking in information, manipulating it
17 in your head and spitting it back out. So this might
18 be like mental math or remembering a phone number and
19 entering it at the same time or taking notes while
20 listening to the lecturer.

21 Q And can you also just define what processing
22 speed is?

23 A Sure. This is how quickly someone takes in
24 information, makes a decision and acts on it. So again
25 this would be like answering questions on tests or

1 writing notes.

2 Q So having scores for working memory in the
3 low average range, could that affect J.H.'s ability to
4 learn?

5 A Yes. It could.

6 Q In what way?

7 A Again it might take her a little bit longer to
8 answer questions. She might miss some information as
9 she's taking notes, because that's a very active
10 process where you have to listen to information, write
11 it down while continuing to listen to what's coming in.
12 So she may miss some things.

13 Q And having a -- a weakness in processing
14 speed, could that also affect J.H.'s ability to learn?

15 A Yes.

16 Q In -- in what way?

17 A Again that she might need repetition, she might
18 miss some things and then she would need more time to
19 answer and to do her work.

20 Q Okay. Let's turn to the next heading in your
21 report on page six, "Executive Functioning Memory and
22 Learning." Could you walk us through your findings in
23 that section?

24 A Sure. Are we skipping "Academics?"

25 Q Did I skip "Academics?"

1 A Sorry.

2 Q I'm sorry. Hang on. Oh, you're right.
3 Sorry. Let's do that first. "Assessment of Academic
4 Functioning," can you walk us through your findings in
5 that section please? That's on page five of your
6 report.

7 A Okay. So her -- most of her scores were above
8 grade level. Most of her scores were actually above
9 high school level. So her language abilities were
10 average or above for the most part. Her reading
11 abilities were average or above and her writing was
12 average or above. The only outlier was her math. So
13 when it was untimed she scored above high school level,
14 but when there was a time limit her math skills looked
15 like a sixth grader and so she needed more time to
16 really show her really advanced math abilities. So
17 that tells us that there's a learning disability and
18 specifically in math fluency. So timed math.

19 Q Okay and having this outlier of math being
20 such a discrepancy, would that affect J.H.'s ability to
21 learn?

22 A Yes.

23 Q And in what way?

24 A So timed math tasks might underestimate her true
25 abilities and because it takes her longer class work

1 and homework may take her longer and it would take her
2 away from other tasks. It also could just be really
3 frustrating and exhausting for her, taking her away
4 from other subjects.

5 Q Okay. Now let's turn to page six, "Executive
6 Functioning Memory Learning." Can you describe for us
7 the findings in that section of your report? It's on
8 page six.

9 A Sure. So with that -- I'm sorry. I forgot, with
10 the previous, because I just saw, I'm looking at the
11 scores, that her reading was actually at a college
12 level, but when things were timed she did lower. So
13 oral word fluency also, not just the math fluency. So
14 this is how quickly she can generate responses. So she
15 gets there eventually and will have a grade level or
16 even better response, but it will take a little bit
17 more time. I kind of see it as like a computer when
18 you have a lot of windows open. So it's doing complex
19 things, but it slows it down a little bit and so that
20 kind of feeds into you were asking about executive
21 functioning and memory. So her verbal memory was
22 better than her visual memory. So she struggled with
23 specifically design memory was in the low average. So
24 this is like abstract things which kind of feeds into
25 that and is congruent with that issue in math. She did

1 best -- unlike most people she did best at remembering
2 a list of words that were unrelated as opposed to a
3 story. So that tells me that she might get overwhelmed
4 if there's too much extra information and she has
5 trouble picking out the most important parts. So in a
6 classroom it would be really important to really
7 highlight the most important parts for her and to
8 repeat things.

9 Also with the executive functioning she showed
10 good flexibility of thinking and problem solving. The
11 only issues were when things were timed. Then she --
12 her responses looked like they were lower than her true
13 abilities than -- than her I.Q. score says she can do
14 because of that time limit if that makes sense.

15 Q So you had found very low range for
16 immediate memory. Can you describe what that is for
17 the Court? On page seven.

18 A The immediate verbal memory was in the low average
19 range and immediate visual memory was in the very low
20 range or fourth percentile. So with verbal that means
21 again that she had trouble recalling what she heard.
22 Later when she was given multiple choice it did -- we
23 can see that it did get in there. So again she's
24 trying really hard, but her brain was just kind of
25 fighting her a little bit where it was hard for her to

1 recall all of the information, particularly when it was
2 visual. So she did better only than four percent of
3 people her age when it was only visual. She needs the
4 verbal or verbal and visual together which is what the
5 WISC-V immediate symbol translation shows. So she
6 needs multiple sources and types of information.

7 Q And what does it mean to score in the very
8 low range for the D-KEFS verbal fluency test on page
9 seven of your report?

10 A Again that's going to the lower processing speed
11 and that she might be slower to respond, but that says
12 nothing about the quality of the response.

13 Q And you also indicated that she scored in the
14 low average range for color naming on page seven. Can
15 you describe what that is?

16 A Again I feel like a broken record, but same thing.
17 She was consistent at least that it -- that she's slow
18 to respond, she's methodical, but the content is good.

19 Q And you mentioned in your report on page
20 eight about J.H.'s attention and could you describe how
21 her attention issues would affect her in a classroom?

22 A Yes. So she did not meet criteria for ADHD, but
23 she had some trouble with attention particularly this
24 could mean that she's just not attending or more likely
25 a lot of the time she was attending to everything and

1 not able to pick out the most salient points. So that
2 could be really overwhelming in a classroom and can
3 kind of make someone just shut down and also just miss
4 the most important part.

5 Particularly for her she was really sensitive to
6 sound. So when there's a lot of auditory stimulation
7 it might be hard for her to pick out the important
8 things that a teacher is saying.

9 Q Would that affect her in other areas of a
10 school?

11 A Yes. So I talk about in the recommendations
12 schools a lot more than just a classroom. So you have
13 -- particularly the cafeteria can be really
14 overwhelming for kids like this and hallways can be an
15 overwhelming place for a lot of us in high school. So
16 yeah, it would affect her across the board.

17 Q Okay. On page nine of your report it
18 indicates that J.H. scored in the at risk levels for
19 shifting, working memory, task completion and is there
20 anything different in these that you haven't already
21 described to the Court or is there something new that
22 would be affecting her ability to learn?

23 A So this unlike the other ones, this is the answers
24 to a questionnaire that she filled out. So the other
25 things we've been talking about is me seeing her work

1 in real time. This is her perception of herself, but
2 it very much parallels the things I was seeing. It
3 might be hard for her to move her attention from one
4 thing to another, the issues with memory that we talked
5 about and she felt like she had trouble getting things
6 done within the time limit, which again makes sense
7 with the fluency and processing speed we've talked
8 about.

9 Q And on page nine you have a heading, "Social
10 Emotional Adaptive Functioning." Is that what you were
11 just describing, how she rated herself or is there
12 something else in there as well of your findings?

13 A There's more ratings of herself that also look at
14 not just executive functioning, but behavioral and
15 emotional functioning.

16 Q And what were your findings in that?

17 A That she rated that she has a negative view of
18 school or that -- more so a negative view of herself in
19 school at that time and that she was struggling with
20 anxiety or with stress particularly social and
21 interpersonal and that she felt pretty badly about
22 herself. So that's what the sense of inadequacy is,
23 that no matter how hard she tries it doesn't matter.
24 She was feeling pretty defeated and depressed.

25 Q And what was the date of your report as well

1 as the dates that you saw J.H.?

2 A I saw her in 2017 on July 31st, August 2nd and
3 August 3rd. It was about eight hours total together.

4 THE COURT: All three days?

5 THE WITNESS: I'm sorry?

6 THE COURT: All three dates was a total of
7 eight hours?

8 THE WITNESS: Yeah.

9 THE COURT: Thank you.

10 BY MS. WARSHAW:

11 Q On page 11 of your report, there is a chart
12 in the middle and can you describe for me what this
13 test is and what your findings were?

14 A Sure. So this is just the I.Q. testing that we
15 talked about already and next to her previous I.Q.
16 scores that were done as part of the school's
17 evaluation six months earlier. So I just wanted to see
18 -- and -- and the scores were pretty consistent between
19 the two.

20 Q So I'm going to -- this might be a little
21 confusing, but I'd like you to look at both the school
22 report as well as your findings and just compare a few
23 of the findings. Okay?

24 A Okay.

25 Q So the school report is located in J-15 which

1 is -- it should be the same booklet and I'm looking at
2 the fourth page and fifth page of --

3 THE COURT: J-15 is -- you're free to
4 disagree, but what exactly is J-15?

5 MS. WARSHAW: That is the school
6 psychological report --

7 THE COURT: Thank you.

8 MS. WARSHAW: -- that was done.

9 THE WITNESS: Okay.

10 MS. WARSHAW: Okay.

11 THE COURT: Did you review this when you did
12 your report?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Thank you.

15 BY MS. WARSHAW:

16 Q Okay. So let's go through a few things. So
17 when you go to the school report, page four, at the top
18 section it says, "Composite Score Summary, Working
19 Memory." Can you tell us what that score was?

20 A Yes. So she --

21 Q Do you see that?

22 A -- she got a standard score of 86 which puts --
23 put her in the 18th percentile. So she did better only
24 than 18 percent of people her age, even though her I.Q.
25 is way higher than that, in working memory. So again

1 this is the ability to take in information and
2 manipulate it in your head and spit it back out which
3 is a lot of what's happening at school with answering
4 questions, both in the classroom and on tests.

5 Q And that was categorized as the low average
6 range. Is that --

7 A Correct.

8 Q -- fair and accurate?

9 A Yes.

10 Q Okay and when you go to your report the
11 working memory, can you describe what you found? If it
12 was consistent with the school district?

13 A Yes. It was consistent. It was in the low
14 average range.

15 Q Okay.

16 A In the ninth percentile.

17 Q Turning to the -- the fifth page of the
18 school district's psychological report you'll see block
19 design. Can you describe what that is?

20 A Yes. The person has a stimulus book in front of
21 them that has a picture of a design with blocks and
22 then she actually gets physical blocks and she has to
23 make the same design and it's within a time limit.

24 Q And can you describe, you know, what the
25 range of that score was that the school district found?

1 A You mean just how to interpret the nine?

2 Q Yes.

3 A That was in the average range compared to peers.

4 Q And in your report on page 11 you also tested
5 for block design. Was your score comparable to that of
6 the school district's?

7 A Yes.

8 Q Going down on the school district's report,
9 page five of their psychological report, in the section
10 that says, "Working Memory Subtest Score Summary for
11 digit span arithmetic," can you describe for me those
12 scores and what the range -- were for those?

13 A On the test -- the school scores?

14 Q Yes.

15 A Digit span was in the low average range. So this
16 is her ability to take in numbers and then rearrange
17 them in a certain way in real time out loud. So just
18 the auditory input. So again think about lectures in
19 class or people talking to you and then arithmetic was
20 timed mental math and that was in the average range.

21 Q And going to your findings for digit span and
22 arithmetic on page 11 of your report, did you come up
23 with comparable results?

24 A Digit span, yes. It was statistically the same
25 and low average. It was -- the arithmetic was a little

1 lower in the testing that I did and it was in the low
2 average range.

3 Q Okay. Going back to the school district's
4 report, page five, under "Processing Speed Subtest
5 Score Summary," it says "Symbol Search 5." Could you
6 describe what that is and what the range of that score
7 is?

8 A Yes. So that was even below low average. That
9 was borderline impaired. So that was quick -- how
10 quickly she could scan a page and notice similarities.

11 Q And going to your report with the same
12 testing, page 11 for Symbol Search, is your score
13 comparable to what the school district found?

14 A Yes.

15 Q In your professional opinion was there a
16 discrepancy between these scores and her overall I.Q.
17 functioning?

18 A Between the working memory and processing speed --

19 Q On --

20 A -- on her overall --

21 Q Yes. On scores --

22 A I'm sorry. I'm not sure what you mean.

23 Q -- that -- okay. Let me rephrase that. In
24 your professional opinion was there a significance to
25 the low average and the borderline scores in these

1 areas compared to her overall functioning?

2 MS. HOWLETT: Objection, Your Honor. I'm not
3 sure what she means by "significance."

4 THE COURT: Yeah. I'm finding a hard time
5 following. Are we talking about -- are we talking
6 about the school's report?

7 MS. WARSHAW: Yes.

8 THE COURT: Or her -- because her report and
9 the school reports are -- seem to be fairly in sync
10 with -- except my notes except for -- for one thing
11 where she found her to have -- on the math, she found
12 her to be low average on the working memory and -- I'm
13 sorry. If I misstate something jump in.

14 THE WITNESS: Okay. You got it.

15 THE COURT: All right. The Doctor found
16 working memory in math in low average and the school
17 found it as average and so far that's the only
18 discrepancy I note between her findings and the school
19 findings based on her testimony so far. So your
20 question is regarding the school's report or her
21 report?

22 MS. WARSHAW: With regard to the school's
23 report.

24 THE COURT: Okay. Because you're asking for
25 an opinion. I just need to know what the opinion

1 relates to.

2 MS. WARSHAW: Okay. No problem.

3 THE COURT: Thank you.

4 BY MS. WARSHAW:

5 Q Okay. With regard to the School District's
6 report, in your opinion would there have been a
7 discrepancy with these scores compared to some of her
8 other scores which were in the higher average range?

9 A Yes. I would consider working memory and
10 processing speed relative weaknesses in my test results
11 which were pretty much the same as the school's.

12 Q And can you describe if you haven't already
13 if there's anything new the significance of this
14 discrepancy in the School District's psychological
15 evaluation?

16 A Sorry. Say that again.

17 Q Okay. Let me rephrase that.

18 In your opinion if the School District came
19 up with these discrepancies would that have warranted
20 further testing?

21 A I don't know. That's hard to answer, but I think
22 -- I think I get your first question now, that it would
23 impact or it would reflect issues in the classroom,
24 again in terms of taking in information which is what
25 learning is and then I did the academic testing because

1 that hadn't been done yet and so I wanted to see how it
2 was impacting specific subject areas.

3 Q Thank you. Okay. In the back of your report
4 there are a bunch of charts. Are those reflective of
5 the written synopsis that you did in the rest of your
6 report?

7 A Yes.

8 Q Okay. Is there anything different in those
9 charts that is not reflected in the written format of
10 your report?

11 A No.

12 Q Okay. Do you have an understanding as to
13 what it means to be emotionally disturbed?

14 MS. HOWLETT: Your Honor, object to that.
15 Emotionally disturbed general? Emotionally disturbed
16 under the Code?

17 THE COURT: Yeah. I mean --

18 MS. HOWLETT: Are we talking about --

19 THE COURT: -- I'm going to allow the
20 question, but clarify --

21 MS. WARSHAW: Okay.

22 THE COURT: -- clarify the question please.

23 BY MS. WARSHAW:

24 Q Do you have an understanding of what it means
25 to be emotionally disturbed in the sense of classifying

1 a student under the IDEA?

2 A Not really. It's not an DSM diagnosis and so I
3 don't really deal in that.

4 Q What if anything did you find with regard to
5 J.H.'s emotional state?

6 A So the things that she was endorsing was really
7 being hard on herself, wanting to go to school, but not
8 being able to which would then -- I think because of
9 that anxiety and feeling overwhelmed and so then that
10 was leading to feeling badly about herself and
11 depression.

12 Q You had mentioned something about noise.
13 Could you describe for the Court what you found with
14 regard to noise issues?

15 A Sure. So there's one test of auditory attention,
16 when the person puts on headphones and has to listen to
17 sounds and respond to certain sounds and as soon as she
18 started she lowered the sound significantly to the
19 point -- I've never ran -- I've done hundreds of these.
20 I've never written this in a report before or really
21 noticed it where -- I don't know how she heard it, but
22 she turned it down so low. So it was really noticeable
23 to me that sound of that testing to bother her. So I
24 asked her about it and she said that she's been told
25 that she's sensitive to noise. So then I was thinking

1 that that probably is feeding into issues at school,
2 because like we were talking about before, the
3 cafeteria and the hallway could be really loud or in
4 the classroom the teacher might be talking and
5 someone's tapping their foot in the back and someone
6 else is whispering and the clock is going and so it's
7 hard for her to focus on and process what the teacher
8 is saying in that setting.

9 Q Okay. Could you please turn to page 13 of
10 your report? And is it fair to say that page 13, 14
11 and 15 of your report contains your recommendations?

12 A Yes.

13 Q And can you tell us on page 13 what the
14 diagnosis was that you came up with?

15 A Yeah. There were three, so specific learning
16 disorder with impairment in mathematics, specifically
17 with fluent calculation moderate. So that's a really
18 long way of saying a learning disability in math
19 fluency or speed, times math and then major depressive
20 disorder, recurrent episode moderate and generalized
21 anxiety disorder.

22 Q And can you go step by step through your
23 recommendations for the Court?

24 A Okay. All of them?

25 Q In -- you know, maybe you could summarize?

1 Let's start with -- let's start with number two.

2 A Okay. So basically trying to take all that
3 information together and synthesize it, it seemed like
4 J. would benefit from -- or sorry -- J.H. would benefit
5 from a small classroom setting in a small school
6 setting without overwhelming stimulation and the other
7 things that relates to that were the relative
8 weaknesses in processing speed or anything that
9 required timing, math fluency, oral fluency, anxiety
10 and depression. So that she needs extra time to
11 process information and to formulate responses, but she
12 can do it and then I talk about ways to work on the
13 anxiety and helping her speak up for herself to
14 teachers when she hasn't gotten all the information and
15 that she needs to be in a classroom where she's
16 challenged at her intellectual level.

17 Q You specifically say in -- in part two that
18 she needs academically vigorous classroom based on her
19 ability and achievement scores. Is that -- would you
20 categorize that as a college bound classroom?

21 A Yes.

22 Should I keep going to number three?

23 Q Yes, please.

24 A Okay.

25 Q Thank you.

1 A Sorry. And because of the hypersensitivity to
2 noise that I noticed, I'm not an audiologist. It was
3 just kind of qualitative that I noticed it and so I was
4 recommending auditory processing evaluation to
5 understand that piece better and then in the meantime
6 just accommodations, like noise canceling headphones or
7 being able to listen to headphones with music to kind
8 of make the environment less overwhelming, being able
9 to take breaks in -- in a quiet space. So maybe this
10 was a guidance office, but not necessarily to talk to
11 the person, just to have a quiet space and then because
12 cafeterias can be so overwhelming and she was having
13 trouble making friends, possibly having a smaller like
14 some school guidance counselors will have like lunch
15 bunch groups in the guidance office. So it would help
16 with getting her out of that noisy environment and help
17 with trying to build relationships with a smaller group
18 of people.

19 In terms of testing accommodations, because of the
20 weakness in processing speed and math fluency and
21 anxiety and depression which also can slow someone
22 down, that she would benefit from expanded time on
23 tests, a distraction free setting, especially because
24 she's so sensitive to noise and breaks if she does get
25 overwhelmed.

1 Because of the math disability that she might need
2 accommodations like doing every other math problem for
3 homework just to check for understanding without
4 causing like unnecessary frustration and allowing extra
5 time for math tests.

6 Because -- with the memory findings, that means in
7 the classroom that she would need information presented
8 in a verbal and a pictorial way together and that's how
9 her brain really maximized memory and not to have too
10 much extra information in that. That's not relevant,
11 because she has trouble picking out those salient
12 points.

13 That she would benefit from continue -- from
14 counseling and support in the school to deal with the
15 anxiety and helping her build friendships and then I
16 have some accommodations for just kind of executive
17 functioning and structure of a classroom so that she
18 might especially with the auditory sensitivity be
19 better sitting next to the teacher, reducing assignment
20 length so she doesn't get overwhelmed, so she can still
21 show her abilities.

22 Kind of chunking information. So not throwing too
23 much at her at one time, but delivering it in chunks,
24 making directions really clear, making sure directions
25 are auditory and written down. So she can refer back

1 to them, especially because she's less likely to ask
2 for help at that point because she was so anxious.

3 That it should still be paced at her level. So
4 not too low and not too high and that she might need
5 step by step instructions.

6 I'm almost there.

7 And then on page 15, breaking tasks into shorter
8 segments. Again so she doesn't get overwhelmed and can
9 feel a sense of accomplishment and keep going and build
10 that momentum and continuing to reinforce her at home
11 and at school for this and then continued therapy to
12 build up her distress tolerance and coping with anxiety
13 and depression, build up her self image, noticing
14 negative thoughts and challenging them, regulating her
15 emotions and helping her interact with others more
16 effectively and then just kind of the usual re-
17 evaluation and some information for families.

18 Q Did you make any recommendations for J.H. to
19 be in a behavior oriented class?

20 A No.

21 Q Would you recommend her being in a self-
22 contained class where they use a reward or token
23 economy systems?

24 A No, because usually those might be paced too low
25 for -- she still needs instruction that's at high

1 school level or above.

2 Q Is it fair to say that putting J.H. in a
3 large high school would be contrary to your
4 recommendations?

5 A It's definitely more likely for her to be
6 overwhelmed in that large high school and not thrive.

7 Q In your professional opinion if J.H. had to
8 take a class through an online computer program would
9 she be able to learn in that way?

10 A She might, but it wouldn't be optimal, because she
11 needs that visual and auditory and the ability to ask
12 for clarification and then I always worry with online
13 schooling that people miss out on the social aspect
14 which is really important.

15 Q Can a student suffering with a disability,
16 like a -- a learning disability, could that create
17 anxiety in a student?

18 A Yes.

19 Q In what way?

20 A If they're not performing that they would like to,
21 if they're highly motivated and they don't understand
22 why they might be putting in a lot of work and the
23 output is just not quite where they wanted to be.

24 Q Do you think that was affecting J.H. in this
25 situation?

1 A Yes.

2 Q I'm going to show you what's been marked J-
3 20. Can you look at that?

4 A Sure.

5 Q Can you just describe for the Court what that
6 is?

7 A It's a letter that I wrote just clarifying some of
8 the psychology jargon that in the newer version of DSM
9 specific learning disorder with impairment in
10 mathematics specifically with fluent calculation
11 moderate is the same as a mathematics disorder which is
12 a learning disability in the previous version of the
13 DSM.

14 Q So is it just for clarification is it fair to
15 say the specific learning disorder with impairment in
16 mathematics specifically fluent calculation is the
17 actual name used for this type of specific math
18 disability in the DSM 3?

19 A DSM 5.

20 Q DSM 5.

21 A Yes.

22 Q Sorry.

23 A Yes.

24 Q Okay. So in this case a disorder is the same
25 thing as a disability?

1 A Yes.

2 Q In your professional opinion would a large
3 high school with crowded hallways and general ed.
4 classes be an appropriate educational setting for J. --
5 for J.H.?

6 A No, that would definitely be more difficult for
7 her.

8 Q Socially and academically in your opinion
9 what level would J.H. be best at?

10 A Academically she should definitely be challenged
11 at a high school level, because I know that there --
12 she talked about how she will get bored and kind of
13 tune out if it's too easy and socially she was
14 struggling, but I think she had the skills, just needed
15 some more support to make that happen.

16 Q In your professional opinion would a self
17 contained multi grade level class be an appropriate
18 placement for J.H.?

19 MS. HOWLETT: Your Honor, there's a lot of
20 speculation in all these hypothetical questions that --

21 THE COURT: There is.

22 MS. HOWLETT: -- we're going to object to.

23 THE COURT: Okay. I'm going to allow it
24 anyway, but your objection is noted.

25 MS. HOWLETT: Thank you.

1 THE COURT: Self contained multi --

2 MS. WARSHAW: Multi grade level.

3 THE WITNESS: So usually I think -- kids with
4 intellectual disabilities or autism being in those
5 types of classrooms and J.'s pretty typical kid, just
6 has -- needed a little more support in math fluency.
7 So that wouldn't have been my recommendation.

8 BY MS. WARSHAW:

9 Q You indicated -- well, we didn't go through
10 your -- all of your qualifications, but as one of your
11 qualifications are you a board certified behavior
12 analyst?

13 A Yes.

14 Q Okay and so as a BCBA are you trained to
15 evaluate people with behavior issues?

16 A Yes.

17 Q In your expert opinion if you had seen
18 behavior issues of concern would you have noted those
19 in your report?

20 A Yes.

21 Q Based on your evaluation of J.H. would you
22 say in your professional opinion that J.H.'s anxiety
23 was wilful behavior?

24 A No.

25 Q How about her depression?

1 A No.

2 Q I'm going to show you what's marked J-1 in
3 that book.

4 A Okay.

5 Q Okay. This document was provided to J.H. by
6 the School District. Can you go through the --

7 THE COURT: Let's identify it. I don't know
8 what it is.

9 MS. WARSHAW: Sorry.

10 Can you --

11 THE COURT: What is that?

12 MS. WARSHAW: -- tell the Court what that is?

13 THE COURT: You tell me what it is.

14 THE WITNESS: It's the 504 student
15 accommodation plan from the high school.

16 BY MS. WARSHAW:

17 Q Can you go to the section where it says the -
18 - basically the accommodations and review them and tell
19 me if they complied with your recommendations for J.H.?

20 A So it says reasonable -- or sorry -- extended time
21 on quizzes and tests, assessments in a private setting
22 and the ability to take breaks when she's anxious. So
23 those are consistent -- oh, sorry, there's more. Sends
24 own -- being able to talk to a counselor. So I do
25 think she needs all of that, but I don't think it would

1 be sufficient.

2 THE COURT: Why?

3 THE WITNESS: Because it doesn't address the
4 learning aspects of her needing repetition and
5 clarification in actual instruction and the noisy areas
6 like the cafeteria or hallways.

7 BY MS. WARSHAW:

8 Q I'm going to refer you to J-9, the -- do you
9 recognize this document as -- as an IEP?

10 A Yes.

11 Q Okay. So page numbers are going to be a
12 little difficult, but -- because it's a little cutoff
13 on my version. So we're going to -- I'm just going to
14 count the pages --

15 A Okay.

16 Q -- and let's see if we get to the same page.

17 Okay. On my version it's the 14th page and
18 it says, "Modification, Supports, Progress Reports."

19 A Okay. I think I'm there.

20 Q In the first section it talks about
21 modifications in the general ed. curriculum. Can you
22 tell me if those modifications that were in this
23 proposed IEP are consistent with your findings?

24 A Yes.

25 Q And do you believe that these modifications

1 alone would be sufficient for J.H. in a general ed.
2 setting?

3 A No. I don't think it would address getting her
4 back into the classroom.

5 Q And would they address her academic needs?

6 A No. It doesn't talk about modified assignment
7 length or some of the teaching methods that we talked
8 about.

9 Q And again placing J.H. in a regular high
10 school in a general ed. type setting or even in the
11 self contained class within a general high school,
12 would that be consistent with your findings?

13 A I guess it just would have to be a small -- a
14 smaller school and still age appropriate material.

15 Q In your professional opinion based on the
16 scores and the information with the I.Q., the
17 discrepancies in the psychological report by the child
18 study team, do you feel that it was prudent for them
19 not to ask for further information?

20 MS. HOWLETT: Objection, Your Honor. I'm not
21 sure what that means.

22 THE COURT: I'm not sure either. Did you
23 read the IEP?

24 THE WITNESS: Not the IEP, but the testing.
25 I had access -- the school shared that with me.

1 THE COURT: What was the question?

2 MS. WARSHAW: Based on her knowledge of the
3 discrepancy in the scores that the School District had
4 in their psychological report, in her opinion would it
5 have been the next step would have been to have more
6 testing done?

7 THE COURT: You read this whole report, you
8 said that?

9 THE WITNESS: Yes. I mean, I don't like to
10 critique other professionals' work, but usually when I
11 see school reports there are those three components we
12 talked about.

13 THE COURT: No, I don't want "usually." I
14 want this one.

15 THE WITNESS: Yeah.

16 THE COURT: Usually doesn't help me.

17 THE WITNESS: Okay. Well, yeah, there was no
18 educational. So it just doesn't say one way or the
19 other whether there's a learning disability, which is
20 why I tested just to see.

21 THE COURT: So the question was after reading
22 the school's report would you -- do you think they
23 should have ordered more testing?

24 THE WITNESS: I like data. So yes, I would
25 do more.

1 THE COURT: That's not the question though.

2 THE WITNESS: Yes.

3 THE COURT: The question is based on what the
4 school did, do you think the school should have ordered
5 more testing, not because you like data?

6 THE WITNESS: Yeah. I don't think that
7 there's sufficient information. I think more -- more
8 testing.

9 THE COURT: Okay. Thank you.

10 MS. WARSHAW: No further questions.

11 THE COURT: Cross?

12 CROSS-EXAMINATION BY MS. HOWLETT:

13 Q Hi Dr. Schuberth. How are you?

14 A Hi. How are you?

15 Q I'm just going to piggy back on that last
16 question. On what basis did you think that the -- that
17 the school should have done more testing after reading
18 Dr. Welk's (phonetic) report?

19 A Can you remind me where that is?

20 Q Well, you just testified to the -- to the
21 Court that you felt that the School District -- should
22 have done additional testing. So what's that --
23 what's your basis for that?

24 A To understand whether there's a learning
25 disability underneath that could be leading to the

1 anxiety. So sometimes kids who are getting straight
2 A's or A's and B's can still have an underlying
3 learning disability if they're really smart. Their
4 ability's just -- or their actual skills aren't
5 measuring up to their natural ability and that leads to
6 tension and anxiety.

7 Q So what in the report specifically would
8 trigger your opinion that educational testing was
9 warranted?

10 A Because it's hard to say if there's a learning
11 disability or not without any educational testing.

12 Q So you recommend that any kid that presents
13 with anxiety has educational testing?

14 A It's hard to say in general, but probably.

15 Q Did J. present with an inability to build or
16 maintain interpersonal relationships with her peers?
17 Do you think that's a fair description of J.?

18 A From their report, yes.

19 Q Did she present or report to you that she had
20 a general pervasive mood of unhappiness or depression?

21 A Recently due to all this, yes.

22 Q What do you mean by that?

23 A That she's not someone that I see as just
24 persistently depressed or having a more depressive
25 Eeyore kind of personality, but because she wanted to

1 succeed and she wasn't able to get herself in school
2 that discrepancy was causing depression.

3 Q Did she have any fears or any sort of
4 symptoms related to school problems?

5 A I mean, anxiety about attending.

6 Q Are you familiar with the Administrative Code
7 having to -- or regarding the criteria for special
8 education?

9 A Not in detail, no.

10 Q So are -- are you aware that -- that a
11 student or -- strike that.

12 Are you aware that a child may qualify for a
13 disability under the DSM, but that may not qualify for
14 criteria for special education?

15 A Yes.

16 Q Are you a learning consultant, a certified
17 learning consultant?

18 A No.

19 Q Did you ever observe the Being Successful
20 program at Mendham High School?

21 A I'm not familiar with the school.

22 Q Counsel asked you before about J-20, it was a
23 letter that you wrote.

24 A Um-hum.

25 Q Why did you write that letter?

1 A Ms. Warshaw contacted me just asking for
2 clarification if that's the same as a -- the diagnosis
3 in my report is the same as a learning disability.

4 Q So the basis for your letter was that Counsel
5 asked you to write it?

6 A Yes. She didn't dictate what I would say, but she
7 just asked me whether it was a learning disability or
8 not and to put it in writing.

9 Q A learning disability under the Code or a
10 learning disability under the DSM?

11 A Under the DSM.

12 Q Can you just flip back to -- Counsel asked
13 you questions about J-1, which is the 504 plan. Can
14 you just clarify what the -- what the date of that 504
15 plan is? Do you see a date on it?

16 A Date of meeting, 12/7/2016.

17 Q And then Counsel asked you about the IEP.
18 There's a meeting date on that as well. Can you just
19 flip to that? That was J-9, just -- I know you're
20 flipping all over there.

21 A Meeting date and start date was 4/6/2017.

22 Q And when did you meet with J.? Do you
23 remember?

24 A In the summer of 2017, July and August.

25 MS. HOWLETT: Just give me one moment, Your

1 Honor.

2 BY MS. HOWLETT:

3 Q As part of the records that you reviewed, do
4 you recall reviewing any of J.'s grades?

5 A Yes. I had a report card.

6 Q Did you have a report card? And her
7 standardized assessments, were they included also, like
8 ASK scores or --

9 A No.

10 Q -- PARC or anything like that?

11 A No.

12 Q Besides the -- sorry. You found a -- a --
13 severe discrepancy in math fluency subtraction
14 according to page 17 of your report. Is that accurate?

15 A One second as I look at the scores. Yes.

16 Q Is that a subtest? What is that, math
17 fluency subtraction?

18 A Yes. It's a subtest. So there are three fluency
19 subtests where they have to answer as many addition,
20 subtraction and multiplication questions that they can
21 in 60 seconds.

22 Q Did she have any severe discrepancies on any
23 of the other areas of testing, on the -- on the WIAT?

24 A The overall math fluency score was statistically
25 below her I.Q.

1 Q And was that based solely upon the math
2 fluency subtraction subtest?

3 A No. That was when all three were taken together.

4 Q But that was factoring in the -- the low
5 score on the math fluency subtraction --

6 A Yes.

7 Q -- subtest? Was J.'s mathematics composite
8 score, was there a severe discrepancy with that score?

9 A No. There was no time limit for those subtests.

10 MS. HOWLETT: I have no further questions,
11 Your Honor.

12 THE COURT: Any redirect?

13 MS. WARSHAW: Yes. Can I have a moment
14 please?

15 THE COURT: Sure.

16 MS. WARSHAW: Thank you.

17 REDIRECT EXAMINATION BY MS. WARSHAW:

18 Q Dr. Schuberth, do you recall what J.H.'s
19 grades were that you received?

20 MS. HOWLETT: Without --

21 THE COURT: Without looking.

22 MS. HOWLETT: -- without looking.

23 THE WITNESS: No, but it --

24 BY MS. WARSHAW:

25 Q Is it in your --

1 A -- I think they're --

2 Q -- report?

3 A -- in the report.

4 Q Okay.

5 A There are A's -- A's and B's and I have specific
6 subjects for each.

7 Q I'm sorry. Say that again.

8 A That they were all A's and B's and I wrote the
9 specific subjects.

10 Q Okay. Great. I'm going to refer you back to
11 the School District's psychological reports and their
12 findings.

13 MS. HOWLETT: Your Honor, is this relative to
14 cross?

15 THE COURT: No, it's not.

16 MS. WARSHAW: Okay. It was. Okay.

17 THE COURT: She didn't ask a question about
18 the School District's psychological report, not one.

19 MS. WARSHAW: Okay. No further questions.

20 THE COURT: You can step down. Thank you,
21 Doctor.

22 THE WITNESS: Okay. Thank you.

23 THE COURT: Next witness?

24 MS. WARSHAW: We're done.

25 THE COURT: You're done. You rest?

1 MS. WARSHAW: Yes, we do.

2 THE COURT: Okay.

3 MS. WARSHAW: Thank you.

4 THE COURT: Thank you both.

5 All right. I assume you both want to submit
6 written post hearing briefs or whatever we call them
7 here.

8 MS. WARSHAW: Yes, Your Honor.

9 THE COURT: Yes? Okay. All right. So let's
10 -- and I assume we're -- we're going to -- we have all
11 the transcripts but this one I believe.

12 MS. WARSHAW: Actually, Your Honor, I was on
13 the phone with Jill Davis (phonetic) --

14 THE COURT: We'll stop -- we don't need to
15 have this on the record --

16 MS. WARSHAW: Okay.

17 THE COURT: -- that we're talking about
18 transcripts.

19 {Whereupon, the proceedings were adjourned.}

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1 STATE OF NEW JERSEY }

2 COUNTY OF ESSEX }

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4 I, Lee A. Romano, assigned transcriber, do
5 hereby affirm that the foregoing is a true and accurate
6 transcript of the proceedings in the matter of F.H. and
7 M.H. on behalf of J.H. v. West Morris Regional High
8 Board of Education, bearing Docket No. EDS 10706-17,
9 heard on August 29, 2018, before the Office of
10 Administrative Law Court.
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